

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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JONATHAN TROFFA,

Petitioner/Plaintiff

Index No. 609510/16

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

Plaintiff,

**AFFIDAVIT OF
JOSEPH M. TROFFA IN
OPPOSITION TO PETITIONER'S
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER**

-against-

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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**AFFIDAVIT OF JOSEPH M. TROFFA IN OPPOSITION TO
PETITIONER'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER**

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

JOSEPH M. TROFFA, being duly sworn, deposes and says:

1. I am the named Respondent/Defendant in this proceeding. I am President, Chief Executive Officer, sole Director, and 50% shareholder of Jos. M. Troffa Landscape and Mason Supply, Inc. (the "Corporation"). I have personal knowledge of the facts stated below.

2. I make this affidavit for the limited purpose of opposing the proposed Temporary Restraining Order (“TRO”) contained in the Order to Show Cause being presented by the Petitioner/Plaintiff, Jonathan Troffa, who is also my son who now wants to destroy the business that I founded in 1972 – long before Jonathan was born – half ownership of which I gifted to him in 1995.

3. The TRO as presented seeks a laundry list of ten enumerated and unwarranted restraints against myself and my wife concerning things that have not happened and are not threatened to happen:

- Regarding TRO ¶¶ 1 and 4, my wife and I (and Jonathan) receive regular salaries which haven’t changed in years. There is no plan or threat to change anyone’s compensation.
- Regarding TRO ¶ 2, there has not been any suggestion of “transferring or encumbering any of the Corporation’s real property,” the simple reason being, as Jonathan admits, the Corporation owns no real property. Moreover, several days after commencing this proceeding, on June 30, 2016, Jonathan improperly filed a Notice of Pendency against the six realty parcels used by the Corporation as month-to-month tenant thereof, all of which are owned by myself personally, by defendant L.J.T. Development Enterprises, Inc. (“LJT”), and defendant NIMT Enterprises, LLC (“NIMT”). A copy of the Notice of Pendency is annexed hereto as **Exhibit A**.

- Regarding TRO ¶ 3, there have been no transfers of Corporation assets outside the ordinary course of business, and none is planned or has ever been threatened.
- Regarding TRO ¶ 5, this vaguely worded provision is a transparent effort to enable Jonathan to violate company policy by continuing to order large quantities of hard goods product from suppliers without purchase orders approved by me as President of the Corporation. Jonathan's rampant, unauthorized purchases of excessive supplies in recent years has severely impacted the Corporation's finances and creditworthiness. As President and CEO of the Corporation, it is well within my authority to control its purchasing practices and policies.
- Regarding TRO ¶ 6, Jonathan is not a director, so removing him as a director is a moot issue. Nor is there any plan or threat to remove Jonathan as vice president which is a nominal title given to him even though he never has exercised any officer duties. The Corporation is legally authorized to issue 200 shares of common stock, all of which are issued and outstanding 100 shares to each of Jonathan and myself, so there is no legitimate concern regarding the issuance of additional shares (see print-out of the Corporation's Entity Information taken from the New York State Department of State's website on July 7, 2016, copy annexed hereto as **Exhibit B**).
- Regarding TRO ¶ 7, since I am sole Director there have been no formal meetings of the Board of Directors, nor have there been shareholder meetings, nor are any

scheduled to take place prior to the hearing of the petition herein. In any event, there is no basis to enjoin director or shareholder meetings in the ordinary course.

- Regarding TRO ¶ 8, the Corporation has not made any “commitments” and is “continuing” any “capital improvements” other than for the Corporation’s own benefit. This request stems from Jonathan’s reckless, demonstrably false allegations that the Corporation has been paying for the acquisition and improvement of the realty owned by myself, LJT and NIMT.
- Regarding TRO ¶ 9, my wife and I have not used any of the Corporation’s assets for our personal benefit nor have we threatened to do so, nor is there one iota of evidence that we have done so. On the other hand, I have good reason to believe that Jonathan has been diverting a substantial amount of the proceeds from cash sales to himself.
- Regarding TRO ¶ 10, there has been no “interference” with Jonathan’s access to the Corporation’s records. On the contrary, upon his counsel’s recent request we recently provided copies of the Corporation’s full tax returns and financial statements for the last three years along with the corporate minutes and stock certificates (see letter from Peter Mahler, Esq. to Karen Hansen, Esq., dated 2/19/16, copy annexed hereto as Exhibit C).

4. Accordingly, none of the requested TRO relief should be granted. Should the Court nonetheless decide to impose any restrictions, they should be made equally applicable to

Jonathan who has been running amok with the business operations and engaging in physical violence and abusive language toward myself, my wife, and other employees of the Corporation who have expressed fear of my son.

5. I will address in full at the appropriate time the baseless allegations contained in the Petition/Complaint and Jonathan's Affidavit in the Respondent/Defendants' opposition to Jonathan's motion for dissolution and other relief. At that time I also will bring to light my son's irresponsible and abusive behavior in regard to the Corporation's business operations, finances, facilities, and staff.

6. I nonetheless wish to bring to the Court's attention at this time, to provide context for its determination concerning the requested TRO, certain irrefutable facts ignored or distorted in Jonathan's submissions.

7. First, as a threshold matter, Jonathan's Petition and supporting Affidavit is completely lacking in specifics or supporting evidence. Rather, they consist of reckless, conclusory, allegations of supposed financial impropriety with absolutely no factual proof. Many of his allegations are demonstrably untrue. Nor does he demonstrate any threat to the status quo or irreparable injury to himself or to the Corporation.

8. Second, Jonathan's primary objective in his lawsuit, to establish the Corporation's "beneficial" ownership of the six realty parcels it operates on, located at 70 Comsewogue Road in East Seatuket, is pure fantasy. Moreover, it is based solely on his self-serving, undocumented, false allegation that, on some unspecified date, I supposedly told him that each of the six parcels "was acquired for the benefit of the Corporation, that the Corporation was to be the beneficial

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owner of the parcels, and that the deeds would be titled in the names of entities which would hold the properties and title for the Corporation” (Jonathan Affidavit ¶ 10).

9. The allegation is preposterous. I never said any such thing. Each of the properties was purchased by the titled owners for their own benefit, with their own money or financing paid for by them. The Corporation did not pay any of the costs to acquire or improve any of the properties, and Jonathan offers no proof that it did because there is none, because it never happened. Indeed, he ignores the fact that the two largest realty parcels which he falsely claims are beneficially owned by the Corporation (#1 and #2) were purchased years before he became a shareholder of the Corporation.

10. The irrefutable fact is that all the realty was acquired, paid for, and is owned by myself personally and by the two above-mentioned holding companies, LJT and NIMT.

11. My wife, Laura J. Troffa, is sole shareholder of LJT which owns the two parcels identified on Jonathan’s Exhibit 1 map as lots #2 and #3.

12. Laura also owns a 99% membership interest in NIMT which owns the three parcels identified on Jonathan’s Exhibit 1 map as lots #1, #4, and #5. The other 1% of NIMT was gifted to Jonathan so that NIMY would have more than one member and therefore not be disregarded for tax purposes.

13. I personally acquired the last parcel, identified on Jonathan’s Exhibit 1 map as #6, and used personal funds to do so. Annexed hereto as **Exhibit D** is a true copy of my personal

Equity Line of Credit Statement from Citizens Bank dated 4/4/13 with an accompanying copy of the check drawn on that account for \$39,628 representing the purchase monies paid at closing.

14. In addition, Jonathan incongruously admits that the two largest parcels, identified in his Affidavit as Parcels #1 and #2, were purchased by me (#1) and by LJT (#2) long before Jonathan even became a shareholder of the Corporation in 1995.

15. Also, to state the obvious, Jonathan never contributed a penny to the acquisition, maintenance or improvement of the properties.

16. In short, other than his 1% membership in NIMT, Jonathan has absolutely no legal, beneficial, direct or indirect ownership interest in any of the six properties, personally or through the Corporation.

17. Other critical facts ignored or distorted by Jonathan include:

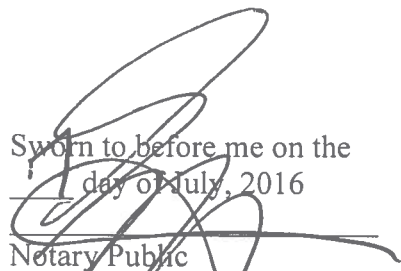
- Portions of the realty owned by NIMT are leased to unrelated, third-party tenants paying rentals at market rates. Indeed, the great bulk of the rental monies received by NIMT come from these unrelated tenants, not from the Corporation. It is from the rental payments made by these tenants, as well as from the Corporation, that NIMT pays the costs of maintaining the properties and making any improvements, contrary to Jonathan's unsupported claim that the Corporation has paid these costs. LJT likewise collects rent from unrelated third-party tenants on the properties it owns and uses those monies to pay its expenses.

- Any suggestion by Jonathan, that the Corporation has been exploited for the benefit of myself, my wife, NIMT or LJT, is ridiculous. The reality is, we have been subsidizing the Corporation all these years for no consideration by means of charging below-market rents and not collecting rent from the Corporation for long periods of time because of the Corporation's poor cash flow and business downturns especially beginning in 2007. Jonathan has been the beneficiary of this leniency.
- As mentioned above, Jonathan has engaged in violent and threatening behavior and verbal abuse at our place of business on multiple occasions, putting some employees in fear of their physical safety. Annexed hereto as **Exhibit E** is a copy of my letter to Jonathan dated May 31, 2016, warning him to cease such behavior.
- The referenced letter also demanded that Jonathan comply with certain business practices concerning purchase orders, invoicing, and other areas of non-cooperation on his part. Because Jonathan has refused to implement a point-of-sale cash register system, I have no way to monitor whether all purchase orders and customer invoices on the hard goods side of the business managed by Jonathan are being properly recorded. I strongly suspect they are not, in part because Jonathan constantly holds back invoices and does not deliver them to the bookkeeper for billing purposes. For instance, he did not submit a substantial number of May 2016 invoices until on or about July 1, which seriously hurts our

collections, while at the same time he overstocks the yard by sending out unauthorized purchase orders to build excessive inventor, some of which is never sold and simply ends up rotting in the yard.

- For many years I allowed Jonathan to manage payables. He abused my trust and forced me to take away that responsibility, and to remove his banking authorization, by incurring many thousands of dollars in bank overdraft fees – in 2013 alone, over \$60,000 – and by making unauthorized payments for his personal American Express card – over \$100,000 in 2013 alone – which caused a potentially grave problem for the Corporation when it was audited for 2013 by Workers Compensation which specifically questioned the AmEx charges. Making matters even worse, Jonathan refused to share copies of his personal AmEx card detailed statements. Even after the Corporation’s outside accountant and I instructed Jonathan to cease making on-account payments to AmEx – among other reasons, to avoid creating another potential audit issue for 2014 – he defiantly continued to do so for several weeks longer, at which point I exercised my authority as President and CEO to remove him from the corporate account.

18. For all of the above-stated reasons, I respectfully submit that the Court should not grant any of the TRO relief requested in Jonathan's proposed Order to Show Cause.


Sworn to before me on the
day of July, 2016
Notary Public

ERIN A. SIDARAS
Notary Public, State of New York
No. 01SI4903642
Qualified in Suffolk County
Commission Expires Aug. 24, 2017


Joseph M. Troffa