

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

JONATHAN TROFFA,	:	Index No. 609510/2016
	:	
Petitioner/Plaintiff	:	VERIFIED CONSENT TO
	:	DISSOLUTION
JOS. M TROFFA LANDSCAPE AND MASON	:	AND PARTIAL ANSWER TO
SUPPLY, INC.,	:	<u>PETITION/COMPLAINT</u>
	:	
Plaintiff,	:	
	:	Assigned Justice:
-against-	:	Hon. Jerry Garguilo
	:	
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

Respondent/Defendants Joseph M. Troffa and Jos. M. Troffa Landscape and Mason Supply, Inc. (the "Answering Parties"), by their attorneys, Farrell Fritz, P.C., as and for their Verified Consent to Dissolution and Partial Answer to the Verified Petition/Complaint, dated June 22, 2016, state as follows:

ANSWERING THE FIRST CAUSE OF ACTION
(Dissolution Under BCL § 1104 (a) – Deadlock)

The Answering Parties deny the allegations contained in paragraphs "76" through "84" of the Petition/Complaint, except admit that judicial dissolution of Jos. M. Troffa Landscape and Mason Supply, Inc. (the "Company") is warranted. The Company and its two co-equal shareholders are irreconcilably deadlocked within the meaning of BCL § 1104 (a) as to all

aspects of the operation and finances of the business. The breach in relations between the two shareholders – father and son – is beyond repair as evidenced by Petitioner’s vicious allegations made by Petitioner against his father, Joseph Troffa, and Mr. Troffa’s wife Laura Troffa. The two shareholders do not and cannot get along or communicate effectively with one another. The ongoing dispute has included episodes of violence by the Petitioner Jonathan Troffa. There is no question that overwhelming and debilitating internal dissension exists, that it is crippling the business, and that the division between the two shareholders is so greatly pronounced such that dissolution is required and would be beneficial to the shareholders. In addition, since the filing of the Petition, and with the Court’s encouragement, the Answering Parties attempted in good faith to resolve the dispute by offering to split the business with Petitioner so as to give him approximately 75% of the Company’s annual revenues, over \$3 Million, together with all equipment and inventory associated with the “hard goods” division of the business which also have far greater value than the Company’s remaining “bulk goods” assets and associated equipment, and also offered Petitioner a below-market lease to remain at the premises owned by Joseph Troffa and the other defendants through at least the end of 2017. Petitioner rejected this extremely generous proposal by his father and then unilaterally announced that he intends to discontinue his dissolution proceeding and continue to prosecute a set of ludicrous claims primarily seeking to establish the Company’s ownership of realty which the Company for decades has leased from its true owners.

Under Section 1116 of the Business Corporation Law, a petitioner cannot voluntarily discontinue at will a proceeding for judicial dissolution. Rather, the Petitioner must seek the Court’s permission to do so based on establishing “that the cause for dissolution did not exist or no longer exists.” Petitioner has made no attempt to satisfy Section 1116 nor could he possibly

do so. There has been no abatement of the conditions warranting dissolution. If anything, the conditions that existed warranting dissolution are stronger now than they were when the Petition was filed on June 22, 2016.

Accordingly, the Answering Parties hereby irrevocably consent to judicial dissolution of the Company as demanded in the First Cause of Action, and respectfully request that the Court order dissolution of the Company and commence the winding up of the affairs of the Company forthwith.

WHEREFORE, the Answering Parties respectfully request an interlocutory judgment as follows:

- A. Ordering judicial dissolution of Jos. M. Troffa Landscape and Mason Supply, Inc.;
- B. Ordering the winding up of the affairs of Jos. M. Troffa Landscape and Mason Supply, Inc.; and
- C. Awarding such other and further relief as the Court deems just and proper.

Dated: August 16, 2016

FARRELL FRITZ, P.C.

By: Peter A. Mahler
Peter A. Mahler
Franklin C. McRoberts
Attorneys for Respondent/Defendants
622 Third Avenue, Suite 37200
New York, New York 10017
(212) 687-1230

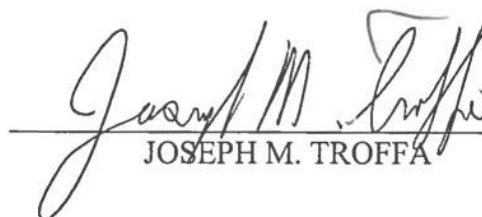
Jeffrey D. Powell
BRACKEN MARGOLIN BESUNDER, LLP
Attorneys for Petitioner/Plaintiffs
1050 Old Nichols Road, Suite 200
Islandia, New York 11749
(631) 234-8585

VERIFICATION

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

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

I am the Respondent/Defendant in this proceeding and I am President and Chief Executive Officer of Respondent Jos. M. Troffa Landscape and Mason Supply, Inc. I have read the foregoing Verified Consent to Dissolution and Partial Answer to Petition/Complaint and know the contents thereof; and the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.


JOSEPH M. TROFFA

Sworn to before me this
16th day of August, 2016



Notary Public

