

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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

Plaintiffs,

-against-

JOSEPH M. TROFFA, 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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: Index No. 609510/2016  
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: Hon. Jerry Garguilo  
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: Motion Sequence No. 005  
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**NOTICE OF CROSS-MOTION**

**PLEASE TAKE NOTICE**, that upon the Affirmation of Peter A. Mahler, dated March 3, 2017, the exhibit thereto, and upon all of the pleadings and prior proceedings, Defendants/Counterclaim Plaintiffs Joseph M. Troffa, 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. (the “Corporation,” together “Defendants”), by their attorneys, Farrell Fritz, P.C., will cross-move this Court before the Hon. Jerry Garguilo, Commercial Part 48, Supreme Court, Suffolk County, One Court Street, Riverhead, New York 11901, on March 15, 2017, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order granting Defendants the following relief affecting the prior Short Form Order herein dated January 11, 2017 and entered January 12, 2017 (the “Order”):

(i) pursuant to CPLR Sections 2221 (a) and 2221 (d):

- a. modifying and correcting that portion of the Order at page 5 thereof wherein it incorrectly states that plaintiff Jonathan Troffa is a member of the Board of Directors of the Corporation, or alternatively

- b. granting Defendants leave to reargue said portion of the Order and, upon reargument, modifying and correcting the Order to delete the said reference to plaintiff as a member of the Board of Directors on the ground the Court misapprehended or overlooked the facts;
- (ii) pursuant to CPLR Sections 2221 (a) and 2221 (d):
- a. modifying and correcting that portion of the Order at page 4 thereof wherein it incorrectly states that the three-year statute of limitations applicable to the First Cause of Action for breach of fiduciary bars only the “first five real estate purchases” alleged in the Amended Complaint, contrary to the Court’s correct statement at page 2 of the Order that the sixth real estate purchase (the so-called “Compost Yard” transaction) occurred on March 12, 2013, more than three years prior to the filing of this action on June 27, 2016, or alternatively
  - b. granting Defendants leave to reargue said portion of the Order and, upon reargument, modifying and correcting the Order to delete and replace the reference to the “first five real estate purchases” with “all six real estate purchases” as being barred by the applicable statute of limitations; and
- (iii) granting such other and further relief as the Court deems just and proper.

Dated: March 3, 2017

FARRELL FRITZ, P.C.

By: /s/ *Peter A. Mahler*

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*Attorneys for Defendants/  
Counterclaim Plaintiffs*

TO: All Counsel of Record (By NYSECF)