

**E-FILE**

SHORT FORM ORDER

INDEX NO. 16/609510

SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY

PRESENT:

**HON. JERRY GARGUILO**  
SUPREME COURT JUSTICE

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

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.,

Defendants

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<p>ORIG. RETURN DATE: 3/15/17 FINAL SUBMISSION DATE: 4/19/17 MOTION SEQ#004, 005 MOTION: 004-MD; 005-MG</p>
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**PLAINTIFFS' ATTORNEY**  
BRACKEN MARGOLIN BESUNDER LLP  
1050 Old Nichols Road, Ste 200  
Islandia, NY 11749

**DEFENDANTS' ATTORNEY**  
FARRELL FRITZ, P.C.  
622 3<sup>rd</sup> Avenue  
New York, NY 10017

Upon the following e-filed papers numbered 85 to 105 read on this motion to reargue and cross motion to modify and correct the prior determination; Notice of Motion/Order to Show Cause and supporting papers 85 -96 ; Notice of Cross Motion and supporting papers 98 - 102 ; Answering Affidavits and supporting papers 103 ; Replying Affidavits and supporting papers 105 ; Other \_\_\_\_\_; and upon due deliberation; it is,

With regard to plaintiffs' motion to reargue, the court finds that plaintiffs have failed to demonstrate that the Court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law in determining the prior motion (*see*, CPLR 2221 [d] [2]; *Mooney v Vecchio*, 305 AD2d 415, 758 NYS2d 506 [2003]; *Foley v Roche*, 68 AD2d 558, 418 NYS2d 588 [1st Dept 1979]). Accordingly, the motion is denied.

With regard to defendants' cross motion, plaintiffs concede in their opposition that they did not allege that Jonathan Troffa was a member of the Board of Directors in the Amended Complaint

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and consent to deleting this statement from the Order dated January 11, 2017. In addition, there is no dispute that the sixth real estate purchase closed on March 12, 2013, and therefore occurred more than three years prior to the commencement of the instant action, is time-barred in the first cause of action alleging breach of fiduciary duty.

Therefore, the Order dated January 11, 2017 is hereby amended on page 5, first paragraph, to reflect the deletion of the statement that Jonathan Troffa is a member of the Board of Directors; and on page 4, paragraph 2, the deletion and replacement of the "first five real estate purchases" with "all six real estate purchases" that are barred by the applicable statute of limitations.

Accordingly, it is

**ORDERED** that the motion (004) by plaintiffs and cross motion by defendants (005) are consolidated for the purpose of this determination; and it is further

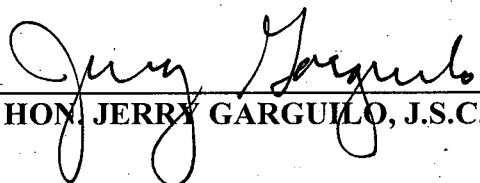
**ORDERED** that the motion (004) by plaintiffs Jonathan Troffa and Jos. M. Troffa Landscape and Mason Supply, Inc. for an order granting leave to reargue defendant's prior motion (Mot. Seq. #001) which, by order of this Court (Garguilo, J.), dated January 11, 2017, was granted in relevant part to the extent of dismissing plaintiffs' first cause of action in part, and plaintiffs' second and third causes of action in their entirety, is denied; and it is further

**ORDERED** that the cross motion (005) by defendants pursuant to CPLR 2221 (a), (d), seeking an order modifying and correcting the prior order, dated January 11, 2017 is granted; and it is further

**ORDERED** that the prior Order dated January 11, 2017 is hereby modified on page 5, first paragraph, to reflect the deletion of the statement that Jonathan Troffa is a member of the Board of Directors; and is modified on page 4, paragraph 2, the deletion and replacement of the "first five real estate purchases" with "all six real estate purchases" that are barred by the applicable statute of limitations; and it is further

**ORDERED** that the parties and counsel are directed to appear in Part 48 on June 19, 2017 at 9:30 a.m. to conduct a preliminary conference.

DATED: 5/17/17

  
HON. JERRY GARGUILO, J.S.C.