

E-FILECarleton Ave.
Central IslipAt Commercial Part 48, Supreme Court,
State of New York, County of Suffolk, ~~One~~ 400
~~Court Street, Riverhead,~~ New York 11901,
on July 21, 2017.

PRESENT:

HON. JERRY GARGUILO, J.S.C.

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In the Matter of the Application of

: Index No. 000902/2017

JOSEPH M. TROFFA, as Sole Director and Holder of
Shares Representing One-Half of the Votes of All
Outstanding Shares of Jos. M. Troffa Landscape and
Mason Supply, Inc.,: **ORDER**
: **AND JUDGMENT**
: **OF DISSOLUTION**
: **AND APPOINTMENT**
: **OF RECEIVER**

Petitioner,

For the Dissolution of JOS. M. TROFFA LANDSCAPE :
AND MASON SUPPLY, INC., a Domestic Corporation,:
Pursuant to Sections 1102 and 1104 (a)(3) of the :
Business Corporation Law, :

- against -

JONATHAN TROFFA,

Respondent.
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UPON the Order to Show Cause, filed by Petitioner Joseph M. Troffa ("Joseph") under Motion Sequence No. 001 on February 17, 2017, and signed by the Hon. Jerry Garguilo on February 21, 2017, directing Respondent Jonathan Troffa ("Jonathan") to show cause why an Order should not be made and entered: (i) dissolving Jos. M. Troffa Landscape and Mason Supply, Inc. (the "Corporation"), pursuant to Sections 1102 and 1104 (a) (3) of the Business Corporation Law (the "BCL"), (ii) appointing a receiver to liquidate and wind up the Corporation's affairs, pursuant to Section 1113 of the BCL, and (iii) granting such other and further relief as the Court deems just, equitable and proper; the Verified Petition, sworn to February 17, 2017 (the "Petition"), and the exhibits thereto; the Affirmation of Peter A. Mahler, dated February 17, 2017;

the Memorandum of Law in Support of Petition for Dissolution and for Conditional Appointment of Receiver, dated February 17, 2017; the Verified Answer to Petition with Counter-Petition, sworn to March 22, 2017 (the "Counter-Petition"); the Affidavit of Jonathan Troffa in Opposition to Petition and in Support of Counter-Petition for Dissolution, sworn to March 22, 2017, and the exhibits thereto; the Memorandum of Law in Opposition to Petition for Dissolution and in Support of Counter-Petition for Dissolution, dated March 22, 2017; the Reply Affidavit of Joseph M. Troffa in Further Support of Petition for Dissolution and for Conditional Appointment of Receiver and in Opposition to Purported "Counter-Petition" for Dissolution, sworn to April 14, 2017, and the exhibits thereto; the Reply Memorandum of Law in Further Support of Petition for Dissolution and for Conditional Appointment of Receiver and in Opposition to Purported "Counter-Petition" for Dissolution, dated April 14, 2017; and the Hon. Jerry Garguilo having issued a Short Form Order, dated and entered May 23, 2017, granting the Petition for judicial dissolution of the Corporation to the extent of directing the parties to appear for a conference on June 19, 2017; and the Petitioner and Respondent having appeared at said conference by their respective counsel, Peter A. Mahler, Esq. and Jeffrey D. Powell, Esq.; and due deliberation having been held thereon and the Court having directed the parties, at the said conference on June 19, 2017, to settle proposed orders for judicial dissolution of the Corporation and appointment of a receiver to wind up the affairs of the Corporation,

NOW, upon the motion of Farrell Fritz, P.C., attorneys for Joseph, it is hereby

ORDERED, that the Petition is GRANTED in its entirety; and it is further

ORDERED, that the Counter-Petition is DENIED in its entirety; and it is further

ORDERED, ADJUDGED, and DECREED, that Corporation is and shall be dissolved by the Secretary of State, pursuant to Sections 1102 and 1104 (a)(3) of the BCL; and it is further

ORDERED, that the Receiver appointed below shall promptly file certified copies of this Order and Judgment with the New York State Department of State and the Suffolk County Clerk in accordance with Sections 1111 (d) and (e) of the BCL; and it is further

ORDERED, that Joseph Covello, Esq. (the "Receiver"), Fiduciary

No. 657481, with an office located at Lynn, Gartner, Dunne & Covello, LLP
330 Old Country Road, Ste 103, is hereby appointed as the receiver
mineola, NY 11501, 516-742-6200
for the benefit of the Corporation, with all powers and duties in addition to those herein specifically provided for, as are possessed and conferred upon receivers pursuant to Articles 10, 11 and 12 of the BCL; and it is further

ORDERED, that, before entering upon his duties, the Receiver shall post a Receiver's Bond in the amount of \$ 50,000, and execute the required Oath, which shall be filed with Clerk of the County of Suffolk on or before Aug. 18, 2017; and it is further

ORDERED, that the Receiver is authorized to take immediate possession of all assets, including inventory and equipment, bank accounts, financial accounts, books, records, and all other documents or instruments of the Corporation. All persons or entities having possession, custody or control of any property of the Corporation are hereby directed to turn such property over to the Receiver, in such manner as the Receiver shall specify; and it is further

ORDERED, that the Receiver is hereby authorized and directed forthwith to take all actions necessary and expedient to wind up the business and affairs of the Corporation, including without limitation, to search for creditors of and liens against the Corporation; to demand, receive, collect, and recover from any person any amounts due or owing to the Corporation; and to marshal, protect, sell and convey title to the Corporation's assets, and that in exercising such authority, the Receiver shall consider or undertake the following matters:

- a. Ascertaining that the proceeds from any sale or auction are directed to the appropriate account(s) of the Corporation and that such funds are used for the payment of creditors before any distribution to the shareholders;
- b. Monitoring: (i) collection by the Corporation of any remaining receivables or other debts; (ii) the sale for cash or distribution in kind of any remaining assets of the Corporation, including without limitation, inventory and equipment; and (iii) the payment or discharge of the Corporation's liabilities;
- c. Overseeing the Corporation's negotiations with third-party creditors in regard to any disputed or uncertain liabilities;
- d. Paying a fair market rent for the Corporation's business premises during such time the Corporation continues to use and occupy the same, and negotiating the termination at the earliest time practicable of any leasehold interest of the Corporation in said premises;
- e. Supervising the distribution to the shareholders of all cash remaining after paying or adequately providing for payment of the Corporation's liabilities;
- f. Ascertaining that a certificate of dissolution of the Corporation and both interim and final tax returns prepared by the Corporation's regular outside accountant are timely filed;
- g. Hiring, firing, employing or discharging officers, directors, agents, servants and employees of the Corporation; and
- h. Taking all other actions reasonably required to carry out the aforesaid powers;

and it is further

ORDERED, that the Receiver shall cause the Corporation to cease all vendor purchases, customer sales, deliveries, advertising, marketing, and all other business operations as soon as practicable but in all events within 30 days of filing of the Receiver's Oath; and it is further

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ORDERED, that the Receiver is authorized to sell at private sale or at public auction for cash all the right, title and interest in the Corporation's property, whether present or future, vested or contingent, with any such public auction sale to be held at a place and on a date to be determined by the Receiver, upon the giving of public notice of the time and place of such sale according to law and the practice of this Court, in Newsday, which publication shall be once in each week for four successive weeks, by and under the direction of said Receiver; and it is further

ORDERED, that the Receiver in his or her sole discretion shall sell and convert to cash all of the Corporation's property in the manner hereinabove authorized, or only so much of the Corporation's property as necessary to fully discharge the Corporation's debts and liabilities plus any cash reserves deemed necessary by the Receiver. If less than all the Corporation's property is sold as aforesaid, and if both Joseph and Jonathan both consent, the Receiver may, after obtaining an appraisal of the same by an independent appraiser, distribute in kind to Joseph any remaining inventory and equipment associated with the Corporation's bulk goods business, and to distribute in kind to Jonathan any remaining inventory and equipment associated with the Corporation's hard goods business, provided (i) any distribution in kind to Jonathan must be conditioned on his removal of such inventory and equipment to an off-site location within ten (10) business days, and upon his failure to do so he shall forfeit any right to such in-kind distribution and said inventory and equipment shall immediately be sold by the Receiver by private sale or public auction in the manner hereinabove authorized, and (ii) if there is any differential in the appraised value of inventory and equipment distributed to Joseph on the one hand and to Jonathan on the other hand,

the one receiving the higher appraised value shall pay the difference in cash to the other; and it is further

ORDERED, that in case Joseph or Jonathan (individually the "Party" and collectively the "Parties") shall become the purchaser of any assets of the Corporation at any private sale or public auction conducted by the Receiver hereunder, the Receiver shall not require said Party to pay in cash the entire amount bid at the sale, but instead that the amount bid shall be credited by the Receiver against the amount, if any, owed to said Party for his pro rata share of the liquidated value of his interest in the Corporation, provided however that if, after so applying such credit to the amount bid, there shall be a balance owed for the amount bid, said Party shall pay to the Receiver, upon delivery to him of a bill of sale or other required transfer documents for the assets, the amount of such balance, and the Receiver, on receiving said balance, shall forthwith deposit and/or distribute the balance as herein directed; and it is further

ORDERED, that the Receiver is hereby authorized to institute, prosecute and defend against all legal proceedings necessary for the winding up of the Corporation's affairs, including without limitation, the action captioned *Jonathan Troffa v. Joseph Troffa, et al.*, Supreme Court, Suffolk County, Index No. 609510/2016. The Receiver may institute and prosecute actions or proceedings against any person owing any debt to the Corporation, but shall not employ counsel therefor except pursuant to further order of this Court; and it is further

ORDERED, that the Receiver shall promptly deposit any sums received by him/her herein to be held in an interest bearing account at an FDIC-insured bank of the Receiver's choice within the County of Suffolk, New York, or at Flushing Bank, and the Receiver shall furnish to counsel for the Parties monthly account statements of the receipts and expenditures incurred on behalf of the Corporation, together with a photocopy of the monthly statements

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1122 Franklin Ave., Garden City, NY 11530

received from said depository, and that no withdrawals be made therefrom except as further directed by the Court or on a draft or check signed by the Receiver; and it is further

ORDERED, that the Receiver shall distribute the liquidated assets of the Corporation pursuant to Section 1005 of the BCL and in compliance with any further order of the Court; and it is further

ORDERED, that the Receiver is prohibited from incurring obligations in excess of the monies in his hands without further Order of this Court; and it is further

ORDERED, that, in compliance with Section 6404 of the CPLR, the Receiver shall keep a written account, which shall be open for inspection in his or her office, at all reasonable times, to the Parties, and that such account shall detail and itemize all receipts and expenditures, and shall indicate at all times the name and address of the depository of all trust funds; and it is further

 **ORDERED**, that the Receiver, ~~on or before~~ *upon completion of his assignment*, and at such times as

the Court shall thereafter direct, shall file with the clerk of this court a verified statement showing the assets received, the disposition thereof, the money on hand, all payments made, the persons to whom paid and the purpose of the payments, the amount necessary to be retained to meet necessary expenses and claims against him, and the distributive share in the remainder of each person interested therein, provided, however, absent further order of the Court, that the Receiver shall make no distribution to any shareholder of the Corporation; and it is further

ORDERED, that the Parties, their agents, representatives, servants and attorneys, or any other person acting for or on their behalf, and all other persons whomever having notice of this Order and Judgment, be and they hereby are enjoined and restrained from:

- a. interfering in any way with the Receiver's discharge of his/her duties and obligations under this Order and Judgment;

- b. except in the ordinary course of winding up the Corporation's affairs, conducting any business on behalf of or in the name of the Corporation, including buying, selling, transferring, or otherwise disposing of the Corporation's assets, including inventory and equipment, except upon the Receiver's express authorization;
- c. except in the ordinary course of winding up the Corporation's affairs, collecting any and all of the Corporation's debts or demands, and from paying out, disposing of, or in any way transferring or delivering to any person or entity any money, property, or effect of the Corporation, except upon the Receiver's express authorization and to deliver same to said Receiver;
- d. withdrawing or transferring any funds from, or closing, any bank account maintained by or on behalf of the Corporation;
- e. discarding, destroying, concealing or removing, any documents, electronic data, information and other material concerning the Corporation, including purchase orders, invoices, receipts, and any other financial record of any kind whatsoever;
- f. deleting, closing or changing the status of any corporate accounts, including bank or credit card accounts; and
- g. without the Court's authorization after making due demand upon the Receiver, prosecuting (but not from defending) the action captioned *Jonathan Troffa v. Joseph Troffa, et al.*, Supreme Court, Suffolk County, Index No. 609510/2016;

and it is further

ORDERED, that the Parties, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, forthwith turn over and make available to the Receiver all books, records, accounts, ledgers, statements, bank account information, and other

documents as shall be necessary for the Receiver to comply with his or her duties and obligations hereunder; and it is further

ORDERED, that the Receiver, in said capacity, is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, that by accepting this appointment, the Receiver certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, Section 36.2 (c) ("disqualifications from appointment"), and Section 36.2(d) ("limitations on appointments based upon compensation"); and it is further

ORDERED, that pursuant to Section 8003 (a) of the CPLR, the Receiver shall be paid the statutory fee for his or her performance of duties hereunder, including the computation and filing of a report; and it is further

ORDERED, that the Receiver may file a letter application, on notice to the parties who have appeared in this proceeding, at any time for approval by the Court of the hiring of professionals to assist the Receiver with the sale, auction, or winding up of the Corporation. The Parties may file a letter objection to a proposed retention within five (5) business days of receipt of the Receiver's application to retain said professional; if a Party fails to file such an objection within said time, that Party's right to object to such retention shall be waived; and it is further

ORDERED, that the Receiver, or any party hereto, may at any time, on proper notice to all parties who have appeared in this action, may file a letter application with this Court for further or other instructions or powers necessary to enable said the Receiver to fulfill his duties; and it is further

ORDERED, that Joseph shall serve a copy of this Order and Judgment upon the Receiver within five (5) business days after entry of same; and it is further

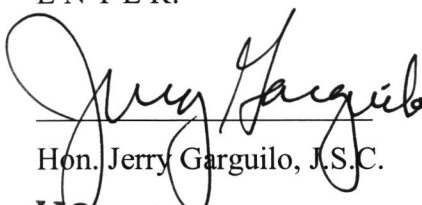
ORDERED, that Commercial Part 48 of the Supreme Court, Suffolk County, shall retain jurisdiction of this proceeding to supervise the winding up of the Corporation's business affairs and the liquidation of its assets.

GRANTED

JUL 21 2017

Judith A. Pascale
CLERK OF SUFFOLK COUNTY

ENTER:

 July 21, 2017
Hon. Jerry Garguilo, J.S.C.**HON. JERRY GARGUILO**