

E-FILE

SHORT FORM ORDER

INDEX NO. ¹⁶ 18/609510

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

PRESENT:

HON. JERRY GARGUILO
SUPREME COURT JUSTICE

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.

ORIG. RETURN DATE: 9/12/18
SUBMISSION DATE: 9/12/18
MOTION SEQ#007
MOTION: 007 - MG

ATTORNEY FOR PLAINTIFFS
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Islandia, NY 11749

ATTORNEY FOR DEFENDANTS
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Upon the following e-filed papers numbered 149 to 207 read on this motion to quash subpoena and for protective order; Notice of Motion/ Order to Show Cause and supporting papers 149 - 162, 180 - 186; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 187 - 200, 201 - 204; Replying Affidavits and supporting papers 205 - 207; Other _____; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the motion (007) by Defendants to quash the subpoenas duces tecum served by Plaintiff Jonathan Troffa upon the offices of Michael R. Strauss, Esq., Cohen, Warren, Meyer & Gitter, P.C. and Cullen and Danowski, LLP dated July 11 and 17, 2018; for a protective order relieving the Strauss Firm, Cohen Firm, and Cullen Firm of any obligation to comply with the subpoenas is granted; and it is further

ORDERED that counsel are directed to appear for a status conference on December 3, 2018 at 9:30 a.m. in

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Commercial Part 48.

In this action, Plaintiff Jonathan Troffa has served non-party subpoenas upon the offices of Michael R. Strauss, Esq., Cohen, Warren, Meyer & Gitter, P.C. and Cullen and Danowski, LLP, dated July 11 and 17, 2018. Defendants now move to quash and seek a protective order relieving these law firms of any obligation to comply with the subpoenas.

In support of the motion, Defendants contend that law of the case precludes this discovery inasmuch as the court determined that the second cause of action was time-barred. That cause of action alleged that Defendant Joseph Troffa breached his fiduciary duty to the corporation by purchasing the compost yard. Defendants further claim that Plaintiff is attempting to re-litigate the statute of limitations for the compost yard sale. Defendants also argue that the six-year statute of limitations for shareholder derivative claims under CPLR 213 (7) does not apply to the dismissed compost yard purchase. Plaintiff is attempting to recast the compost yard transaction as a derivative, equitable cause of action to revive the claim after dismissal.

In opposition, Plaintiffs' counsel affirms that the subpoenas served on Defendants' accountants, the Cullen Firm, seeks the financial accounting for the compost yard transaction, along with financial data that relate to Defendants' self-dealing and breach of fiduciary duty. In addition, Plaintiffs contend that Defendants have made no showing that the documents sought in the subpoenas are not relevant and material.

The N.Y. Civil Practice Law and Rules does not specify a limitations period for breach of fiduciary duty, unjust enrichment, or tortious interference with fiduciary relationship claims, but the New York courts have held that such claims are governed by either a three-year statute of limitations when monetary relief is sought or a six-year statute of limitations when equitable relief is sought (See *Carlingford Center Point Assoc. v MR Realty Assoc.*, 4 AD3d 179, 179-80, 772 NYS 2d 273 [1st Dept 2004] [three-year statute of limitations applied to a breach of fiduciary duty claim seeking monetary damages]). Inasmuch as the second cause of action seeks monetary damages for Defendant Joseph Troffa's alleged breach of fiduciary duty upon his purchase of the compost yard it is time-barred. Therefore, Plaintiff is not entitled to discovery related to the purchase of the compost yard.

Accordingly, Defendants' motion to quash the subpoena and for a protective order is **GRANTED**.

DATED: September 25, 2018


HON. JERRY GARGUILO, J.S.C.