

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

----- X  
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.  
----- X

: Index No. 609510/2016  
:  
: Hon. Jerry Garguilo  
:  
: Motion Sequence No. 012  
:  
: **NOTICE OF MOTION**

**PLEASE TAKE NOTICE**, that upon the Affirmation of Peter A. Mahler, dated September 28, 2022, the exhibits thereto, the Rule 19-a Statement, the accompanying Memorandum of Law, and upon all of the pleadings and prior proceedings, Defendants, by their attorneys, Farrell Fritz, P.C., will move this Court, before the Hon. Jerry Garguilo, Commercial Part 48, Courtroom S-33, 400 Carleton Avenue, Central Islip, New York 11722, on October 19, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order, pursuant to [CPLR 3212](#), and pursuant to the mandate of the Appellate Division – Second Department in its Decision and Order, dated March 3, 2021, ruling that, as applicable to this action, “[CPLR 213 \(7\)](#) provides for a six-year statute of limitations in ‘an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith’” (*Troffa v Troffa*, 192 AD3d 718, 720 [2d Dept 2021]):

- (i) Dismissing in its entirety with prejudice the Fourth Cause of Action in the Verified Amended Complaint, pled as a “Derivative Action,” as barred by the six-year statute of limitations;
- (ii) In the alternative, partially dismissing with prejudice the Fourth Cause of Action insofar as it seeks to recover for any payments made by or on behalf of Plaintiff Jos. M. Troffa Landscape and Mason Supply, Inc. for the 1.78-acre parcel of real property at 70 A Comsewogue Road, East Setauket, New York, known as the “Compost Yard,” prior to June 27, 2010, more than six years before commencement of this lawsuit on June 27, 2016, as barred by the six-year statute of limitations; and
- (iii) Awarding such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to [CPLR 2214 \(b\)](#) answering papers and any notices of cross-motion, with supporting papers, if any, shall be served at least seven days prior to the return date of this motion.

Dated: September 28, 2022

FARRELL FRITZ, P.C.

By: s/ Peter A. Mahler

Peter A. Mahler  
Franklin C. McRoberts  
Viktoriya Liberchuk  
622 Third Avenue, Suite 37200  
New York, New York 10017  
(212) 687-1230

*Attorneys for Defendants*

TO: All Counsel of Record (By NYSCEF)