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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOHN DiNOTO,

Justice

**TRIAL/IAS PART 7
NASSAU COUNTY**

JOSH STANILOFF and GAIL WERSHALS STANILOFF,

Plaintiff(s),

INDEX NO.: 15406/99

-against-

**MOTION DATE: 9/8/00
MOTION SEQ. NO. 004 &
005**

**ROSE STANILOFF, DOREE SEIVER, MITCHELL
SEIVER, GREYSTONE CATERERS, INC., SOLOMON
SMITH BARNEY and DIME SAVINGS BANK OF
NEW YORK,**

Defendant(s).

The following papers read on this motion and cross-motion.

**Notice of Motion/Order to Show Cause..... 1-2
Answering Affidavits.....
Replying Affidavits.....
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....**

The motion brought by the Defendants, Rose Staniloff, Doree Seiver and Mitchell Seiver, in the above captioned action and the cross-motion of the Plaintiffs, both of which motions seek summary judgment in favor of the respective Movants, are determined as set forth hereinbelow.

The moving Defendants are herewith awarded summary judgment, pursuant to Section 213, Rule 3211(a)(5) of the CPLR, dismissing the Plaintiffs' Seventh Cause of Action as set forth in their Amended Verified Complaint. Based upon all the papers submitted for this Court's consideration, the Court finds and determines that the Seventh Cause of Action was not brought within the applicable Statute of Limitations and that the said Statute of Limitations was not tolled.

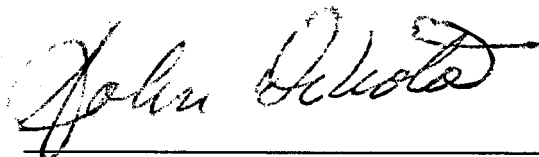
It is well established that such relief may be granted only when it is clear that no triable

issue of fact exists. Alvarez vs. Prospect Hosp., 68 N.Y.2d 320, 325(1986). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law. Zuckerman vs. City of New York, 49 N.Y.2d 557, 562(1980); Friends of Animals, Inc. vs. Associated Fur Mfrs., Inc., 46 N.Y.2d 1065, 1067(1979). A failure to make such a prima facie showing requires a denial of the summary judgment motion, regardless of the sufficiency of the opposing papers. Avotte vs. Gervasio, 81 N.Y.2d 1062, 1063(1993). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact. Alvarez, supra, 68 N.Y.2d, at 324, Zuckerman, supra, 49 N.Y.2d at 562. Although the papers submitted in support of and in opposition to a summary judgment motion must be examined in a light most favorable to the party opposing the motion, Martin vs. Briggs, 235 AD2d 192, 196(1st Dep't 1997), mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. Zuckerman, supra, 49 N.Y.2d, at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment motion, the motion must be denied if there is any doubt as to the existence of a triable issue. Rotuba Extruders, Inc. vs. Ceppos, 46 N.Y.2d 223, 231(1978).

It is plain to the Court that a number of genuine issues of material fact exist in the present case with respect to the delivery to the Plaintiffs of a certain man's pinky ring, VasMon Constantine 14 carat gold man's ring with a blue stone in a gray box and with respect to the distribution of certain shares of stock in GE, N L Industries and Chrysler Corporation.

Accordingly, the balance of the Defendants' motion and the Plaintiffs' cross-motion for summary judgment is denied.

Dated September 20, 2000



J.S.C.