

**SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK**

Present: Hon. Thomas Feinman
Justice

JULIE REA and CHRISTOPHER DUFFY,

Plaintiffs,

- against -

SEAMAN & EISEMANN, INC.,

Defendants.

Index No. 007461-03

Motion Date: 2-9-04

Cal No.

SEQ. #003,02,01

The following papers read on this motion 1-7

Notice of Motion and for Summary Judgment and Affirmation.....	<u>X</u>
Notice of Cross-Motion to Dismiss or Consolidate and Affirmation.....	<u>X</u>
Notice of Cross-Motion to Dismiss Third Party Action	<u>X</u>
Affirmations in Opposition.....	<u>X</u>

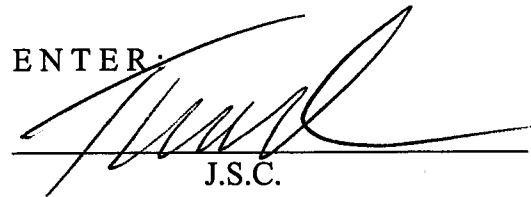
The plaintiffs, Julie Rea and Christopher Duffy, (hereinafter referred to as "Rea"), move for (i) an order of summary judgment pursuant to CPLR §3212, (ii) an order pursuant to CPLR §3211(a)(7) dismissing defendant's counterclaims, and (iii) an order setting the matter down for a hearing. The defendant, Seaman & Eisemann, Inc., (hereinafter referred to as "S & E"), cross-moves to dismiss or consolidate. The third party defendant, Millennium Alliance Group, LLC, Millennium Alliance Group, LLC's Board of Managers, James McKinnon, Robert Feuchter, Frank Gallina and Jim Keein, in their personal and professional capacities as members of Millennium Alliance Group, LLC's Board of Managers, (hereinafter referred to as "Millennium"), cross-moves to dismiss the third party action. The motion and cross-motions are denied without prejudice to renew.

Civil Practice Law and Rules (CPLR) §2103(e) provides that "each paper served on any other party shall be served on every other party who has appeared, except as otherwise may be provided by court order, or as provided in §3012 or subdivision (f) of §3215." The failure to give requisite notice of motion deprives the court jurisdiction to entertain the motion and invalidates the motion altogether. (*Burstin v. Public Service Mutual Insurance Company*, 98 AD2d 928).

Counsel for plaintiff, Rea, failed to serve third party defendant, Millennium, with a copy of the notice of motion for summary judgment and supporting papers. Counsel for defendant, S&E, failed to serve third party defendant, Millennium, with a copy of the cross-motion to dismiss or

consolidate and supporting papers. The question as to the adequacy of service must be disposed of before the merits of the application can be reached.

ENTER:



J.S.C.

Dated: April 8, 2004

cc: Law Offices of Jason L. Ablove
Leeds Morelli & Brown, P.C.

TF:dc

ENTERED

APR 14 2004

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**