

Lesser v Little Italy Pizza of Troy, LLC

2025 NY Slip Op 34930(U)

December 18, 2025

Supreme Court, New York County

Docket Number: Index No. 162065/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

EVAN LESSER,

Plaintiff,

- v -

LITTLE ITALY PIZZA OF TROY, LLC, FRANCMEN 688
LLC, 6TH AVENUE LITTLE ITALY CORP, TAIM
RESTAURANT HOLDINGS LLC, TAIM FLATIRON LLC,

Defendants.

-----X

6TH AVENUE LITTLE ITALY CORP

Plaintiff,

-against-

DAVIDSTEA (USA) INC., SYNDEYS CHEW CHOO INC. D/B/A
CINNABON

Defendant.

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**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595831/2023

The following e-filed documents, listed by NYSCEF document number (Motion 004) 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 187, 188

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Defendant 6th Avenue Little Italy Corp. (“6th Avenue”)’s motion to *inter alia* strike the note of issue is denied in its entirety.

Background

In this more than six-year-old case, plaintiff contends that he was delivering food products to a restaurant on June 14, 2019 when he was injured while descending stairs. The parties entered into a preliminary conference stipulation dated July 27, 2021 (and so ordered by a

prior judge assigned to the case) in which they agreed to complete all depositions by November 2021 (NYSCEF Doc. No. 15). Subsequent discovery stipulations followed in 2022, 2023 and 2024, nearly all of which contained deposition deadlines so-ordered by the Court (*see e.g.*, NYSCEF Doc. No. 39, 49, 58, 62, 82).

The case was eventually assigned to this part and this Court so-ordered a discovery stipulation dated January 24, 2024 that set specific dates for the three remaining depositions (defendant 6th Ave. Little Italy Corp., Taim Flatiron LLC and David's Tea (USA) Inc.) (NYSCEF Doc. No. 82). Also included in this order was a deadline for the parties to update the Court about the status of discovery by April 4, 2024 (*id.*). The parties declined to update the Court and ignored a subsequent update deadline (see NYSCEF Doc. Nos. 84 and 85). The Court eventually set a note of issue deadline and plaintiff filed one.

In a decision dated January 6, 2025, this Court granted three separate motions to strike the note of issue on the ground that depositions remained (NYSCEF Doc. No. 140). The Court set a new note of issue date for July 31, 2025 on the theory that more than six months was plenty of time to complete depositions in this old case, which is a relatively simple one: plaintiff fell down the stairs.

Once again, the parties ignored that deadline and so the Court issued a notice setting a new deadline of November 12, 2025 to file the note of issue (NYSCEF Doc. No. 148). Plaintiff then filed a note of issue on November 7, 2025 (NYSCEF Doc. No. 152).

6th Avenue now moves to strike the note of issue, to direct discovery and to strike crossclaims of certain defendants for failure to comply with discovery. It claims that the depositions of Taim Flatiron LLC, Taim Restaurant Holdings (the "Taim Defendants"), LLC and Davids Tea (USA) Inc. have not been held.

In opposition, the Taim Defendants claim that the parties agreed to a deposition schedule that would proceed in caption order, meaning that the Taim Defendants were to go last on December 9, 2025. They claim there is no reason to strike their pleadings based on this record.

Davids Tea also submits opposition in which it claims that all of the parties except for Davids Tea agreed to do its deposition on November 14, 2025. It contends that the day before its deposition, it complained that its discovery demands from September 13, 2023 had been ignored. It claims that it is willing to produce a witness once it gets discovery.

In reply, 6th Avenue withdrew its motion as against the Taim Defendants as a witness was finally produced. However, it still wants to do a deposition of Davids Tea. It claims it sent over additional discovery to Davids Tea on December 5, 2025.

Discussion

The record here compels the Court to deny the motion. This Court set a note of issue deadline of *July 31, 2025* back in January 2025 after years of ignoring Court deadlines. And yet, the parties decided to, yet again, proceed at their own glacial pace. They ignored that July 31, 2025 note of issue deadline and then refused to complete discovery by the Court's extension to November 12, 2025. Instead, the record shows the parties actually set a schedule that included a deposition date of December 9, 2025 for the Taim Defendants despite the Court's clear deadlines.

The Court declines to set any additional deadlines, declines to strike the note of issue and declines to extend the time to file dispositive motions. Based on the procedural history of this case, it is unlikely that the parties would follow any additional orders or deadlines. Court orders and deadlines have been viewed as mere suggestions, not important dates that require action. The

parties can do the deposition of Davids Tea as a post note of issue deposition if they wish, or they can wait for the trial or dispositive motion to learn what that party has to say - but this Court will not issue an order related to it.

Accordingly, it is hereby

ORDERED that the instant motion is denied.

12/18/2025

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE