

Mandart v Small Bone Innovations, Inc.

2026 NY Slip Op 30125(U)

January 7, 2026

Supreme Court, New York County

Docket Number: Index No. 155577/2017

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

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INDEX NO. 155577/2017

KEITH MANDART,

MOTION DATE 01/06/2026

Plaintiff,

MOTION SEQ. NO. 005

- v -

SMALL BONE INNOVATIONS, INC., STRYKER CORPORATION

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177

were read on this motion to/for EXTEND - TIME.

Plaintiff's motion to extend the note of issue deadline in this 2017 case is denied.

Background

In this seemingly never-ending case, the docket is replete with this Court's exasperation with the parties' glacial pace at moving this case forward (*e.g.*, NYSCEF Doc. Nos. 141, 158).

In pertinent part, this Court ordered a note of issue to be filed all the way back in November 2024 and denied plaintiff's motion for an extension of time to file the note of issue in a decision dated November 18, 2024 (NYSCEF Doc. No. 141).

Defendant then made a motion to strike the note of issue and this Court granted that motion on January 6, 2025, a year ago. And the Court gave almost another year for these parties to finish discovery, setting a new note of issue deadline for December 10, 2025 (NYSCEF Doc. No. 158). The Court lamented the parties' repeated refusal to comply with Court deadlines and the circumstances surrounding the inexplicable inability to complete plaintiff's deposition (*id.* at

3). Apparently, all the parties could manage was a *single half-day* deposition of plaintiff (who was traveling in from Vermont for the deposition) in October 2024 because plaintiff's counsel had a court appearance in the morning (*id.*). That raised countless questions about why the parties wouldn't simply pick a day when they could do a full day of questioning. And, of course, despite the fact that the half-day deposition took place on October 16, 2024 (in defiance of a Court deadline of September 30, 2024), the parties had still not finished it by the time of that motion (MS004), which was filed on December 9, 2024.

Now, a year later, plaintiff bizarrely moves again for the same exact relief¹—to extend the note of issue deadline some indefinite amount of time (plaintiff did not even request a specific date for this extension). And, just like in motion sequence 003, the instant application was made without seeking a TRO and so the deadline long passed before this motion was fully briefed. Apparently, despite this case approaching the ten-year mark, depositions still have not been completed. The completion of plaintiff's deposition (the subject of the above-cited motions) was not done until October 29, 2025. That means it took the parties more than a year to finish a single deposition. Nothing in this motion justified such an inordinate delay. That plaintiff had a surgery in July 2025 does not explain what happened from October 2024 to July 2025 (a nine-month period where the case lay completely dormant).

And despite doing the plaintiff's deposition in October 2025, the parties could not find a way to do defendant Small Bone's (the only remaining defendant) deposition before the deadline of December 10, 2025. Instead, they did what they have done throughout this litigation—set their own deadlines in direct defiance of the Court's order and schedule a January 28, 2026 date. No

¹ The Court observes that plaintiff apparently copied and pasted the first few pages of its moving papers from motion sequence 003 and forgot to change the applicable note of issue date (*c.f.* NYSCEF Doc. Nos. 131 and 163, ¶¶ 1-7).

reason was provided for why the parties needed a three-month break to do defendant's deposition after finishing plaintiff's deposition.

Moreover, the parties contend they want to do non-party depositions and plaintiff acknowledges that these can be completed after the note of issue is filed. Defendant claims that they want to do the "numerous non-party witness depositions" before the note of issue.

Discussion

The Court denies the motion and sets a note of issue deadline for January 13, 2026. The record clearly shows the parties have had more than enough time to complete discovery and, for reasons that are entirely unclear, they have decided to drag this case out for a decade. Although the parties insist this case is complex, the fact is there are only two parties which means there is no reason it should take almost a decade to complete two depositions. This Court has presided over countless cases with dozens of parties that have somehow found a way to file a note of issue before the nine-year mark.

With respect to the non-party depositions, the Court observes that no dates for these were included in the moving papers nor were any notices of deposition. So it appears that at some unknown time, the parties want to take the depositions of some amount of non-parties. That is a recipe to make sure this case never ends.

The failure to file the note of issue by January 13, 2026 will result in the case being marked disposed as abandoned. Of course, the parties are free to do whatever post-note of issue discovery they want.

Clearly, this case needs to get on the trial calendar, finally.

Accordingly, it is hereby

ORDERED that plaintiff's motion to extend the time to file the note of issue is denied;
and it is further

ORDERED that the note of issue must be filed by January 13, 2026 and it is further

ORDERED that if the note of issue is not timely filed, the case will be dismissed as
abandoned without further notice.

1/7/2026
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