

**Elizabeth Canal, LLC v  
Structure Tone Global Servs., Inc.**

2026 NY Slip Op 30346(U)

February 2, 2026

Supreme Court, New York County

Docket Number: Index No. 153543/2017

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*

-----X

ELIZABETH CANAL, LLC, HH159 CANAL DEL  
LLC, JEMCOMCANAL DEL, LLC, ELIZABETH BRONX,  
LLC, JEMCOM CANAL REVERSE LLC,

Plaintiff,

- v -

STRUCTURE TONE GLOBAL SERVICES, INC., CIROCCO  
& OZZIMO, INC., FIRST REPUBLIC BANK,

Defendant.

-----X

CIROCCO & OZZIMO, INC.

Plaintiff,

-against-

RITE-WAY DEMOLITION INC., ALL-SAFE LLC

Defendant.

-----X

STRUCTURE TONE GLOBAL SERVICES, INC.

Plaintiff,

-against-

RITE-WAY DEMOLITION INC., ALL-SAFE LLC

Defendant.

-----X

INDEX NO. 153543/2017  
MOTION DATE 01/23/2026  
MOTION SEQ. NO. 007

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595785/2019

Second Third-Party  
Index No. 595857/2019

The following e-filed documents, listed by NYSCEF document number (Motion 007) 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309

were read on this motion to/for DISCOVERY.

Defendant Structure Tone, Inc.'s ("Structure Tone") motion to compel a non-party ("DRP") to comply with a subpoena is decided as described below.

## **Background**

In this action, plaintiffs complain that defendants mismanaged a renovation project at plaintiffs' property so badly that the building had to be torn down and rebuilt because the building was rendered structurally unsound.

Structure Tone seeks a deposition from a non-party, DRP, that purportedly functioned as plaintiffs' structural engineers. It contends that at plaintiffs' deposition in February 2025, their witness identified DRP as the design professional who informed plaintiff that the building was structurally unsound.

Structure Tone claims it served a subpoena on DRP in April 2025 with a suggested deposition date of June 17, 2025. It contends that it was unable to set a deposition date until October 22, 2025 and that on the morning of the deposition, DRP's principal sought a delay on the ground that he thought one of the parties was going to compensate him as an expert. Apparently, the witness did not recall working on the project. Structure Tone claims it then followed up via email on October 26, November 6, November 11 and December 3 to confirm another date to no avail. Structure Tone then filed this order to show cause on December 29, 2025.

It points out that plaintiffs filed their note of issue on December 9, 2025 and that, based on a court order signed by prior judge, the dispositive motion deadline is 60 days after the filing of the note of issue. No party has moved to strike that note of issue and the time to do so has passed.

DRP responds and its counsel says that it was only recently retained to represent DRP. It insists that the parties have agreed to a tentative date of February 26, 2026 for the deposition.

## Discussion

Based on this record, the portion of the motion that seeks the deposition of DRP is moot as DRP readily admits it is willing to appear for a deposition.

However, the Court denies the branch of the motion that seeks an extension of the time to file dispositive motions. The fact is that Structure Tone has known for a long, long time that DRP was an entity it wanted to question and it did not make substantial efforts to timely secure this deposition. It claims it found out about DRP in February, yet waited until April to issue a subpoena and set the return date for June - then agreed to a deposition in October. Even more concerning is Structure Tone's near complete inaction following the Court's November 19, 2025 order. That order considered letters filed by the parties about outstanding discovery and observed that plaintiffs requested a note of issue deadline given that there was only one deposition outstanding that had been pending for a long time (NYSCEF Doc. No. 281). The Court permitted the filing of a note of issue by December 17, 2025 (*id.*).

To be sure, plaintiffs filed the note of issue early—on December 9, 2025. But the Court's deadline did not motivate Structure Tone to take the necessary steps to promptly seek this allegedly critical deposition. Structure Tone did not seek to vacate the Court's order setting a note of issue deadline. It did not move to strike the note of issue. And, for some reason, it waited until December 29, 2025, to make the instant motion. Given that there was a 60-day deadline to file dispositive motions, these delays do not suggest that this deposition is critical. Moreover, the agreed upon date for this long outstanding deposition is February 26, 2026—this does not evince a party trying to move the case. It shows a party needing more than a year to take this deposition (as it this party was identified at a February 2025 deposition of plaintiffs). Structure Tone can

certainly take the deposition but there is no reason to delay a case that has been pending for almost nine years.

Accordingly, it is hereby

ORDERED that Structure Tone Global Services Inc.'s motion is moot with respect to the request to depose the non-party and denied with respect to the request to extend the dispositive motion deadline.

2/2/2026  
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