

**Re-Steel Distrib. Co., Inc. v New Major Bldg. Supply,  
LLC**

2025 NY Slip Op 32890(U)

July 21, 2025

Supreme Court, New York County

Docket Number: Index No. 654919/2023

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

RE-STEEL DISTRIBUTION COMPANY, INC.

Plaintiff,

- v -

NEW MAJOR BUILDING SUPPLY, LLC,

Defendant.

-----X

**INDEX NO. 654919/2023**

**MOTION DATE 07/11/2025**

**MOTION SEQ. NO. 001**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

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

Defendant’s motion to strike the note of issue is denied.

**Background**

This breach of contract action concerns plaintiff’s contention that it supplied 48,810 pounds of rebar to defendant in November 2022 and that defendant failed to pay for these materials. Defendant moves to strike the note of issue on the ground that discovery remains outstanding. It contends that there are emails outstanding between an employee for plaintiff and defendant’s own employee and that defendant wants to depose the driver of the trailer that allegedly delivered the materials to defendant. Defendant complains that the note of issue was filed only two days after the deposition of defendant.

In opposition, plaintiff points out that defendant has successfully delayed the progress of this case. It emphasizes that it served discovery demands in November 2023 and defendant did not respond until April and May 2025. Plaintiff points out that defendant never served any initial formal document requests. It contends that at plaintiff’s deposition held on May 7, 2025, counsel

for defendant agreed to send a post-EBT demand in writing but never did so. Plaintiff insists it repeatedly asked for a copy of its deposition transcript (which would contain the post-EBT demands) but that defendant did not exchange it until June 11, 2025 more than a month after the deposition. Plaintiff says that it responded to demands raised at the deposition, as best it could, and that vacatur of a note of issue is inappropriate where allegedly outstanding demands were never properly served.

With respect to the proposed deposition of the truck driver, plaintiff claims that defendant's deposition revealed that defendant has no knowledge whether or not the materials were received. It claims that defendant's witness admitted to not reviewing the relevant documentation until April or May 2023 (months after the alleged delivery) and that demanding this non-party witness' deposition is only a delay tactic. Plaintiff also insists that defendant's deposition was initially scheduled for May 14 only to be adjourned to May 20 and then to May 28 at defendant's request.

Defendant did not submit a reply.

### **Discussion**

The Court denies the motion to strike the note of issue. The record on this motion shows that defendant has been, at best, indifferent about pursuing its discovery obligations. The Court stresses that the reason a note of issue deadline was initially set was due to the parties' refusal to upload a discovery stipulation in clear violation of two orders (NYSCEF Doc. Nos. 12 and 14). Despite the Court setting a note of issue deadline in a May 16, 2025 order, defendant did not do anything (such as making a motion) to extend the note of issue deadline.

Plaintiff is correct that defendant's failure to serve a formal post-EBT demand renders it impossible for this Court to find that the note of issue should be stricken based on a vague

reference to forthcoming demands in a deposition held months ago. In fact, defendant explicitly agreed to send a formal post-EBT demand (NYSCEF Doc. No. 32 at 8 of 11) and never did on this record. The lack of an actual outstanding demand renders this motion as meritless.

With respect to the need for the deposition of the non-party truck driver, the Court declines to vacate the note of issue on this basis. Defendant did not point to any formal demand for the name of this driver. In fact, the deposition transcript for plaintiff contains a representation made by counsel for defendant that she would “make a demand after the deposition” (NYSCEF Doc. No. 29 at 29) and, evidently, she never did. If this information were truly important, one would think that a demand would have been served promptly after the deposition or, at the very least, prior to the note of issue deadline. For some reason, defendant never actually demanded this information but now claims it is absolutely critical to its case.

### **Summary**

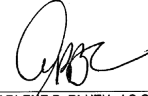
Litigation can only proceed toward the filing of a note of issue if both parties actively pursue their desired discovery. Here, defendant took plaintiff’s deposition and indicated that it would subsequently serve a demand for post-EBT discovery. Defendant failed to do so despite the fact that it had promised to so at the deposition, in a subsequent email thread and even though the Court had set a May 30, 2025 deadline for the note of issue. Moreover, defendant did not cite an excuse for why it did not properly pursue the outstanding discovery prior to the filing of the note of issue. Nor did it bother to file a reply to contest plaintiff’s assertion that defendant never made a formal post-EBT demand or diligently pursued this discovery. Here, defendant did not seek further discovery – either by official demand or by making a motion to extend the note of issue deadline. Plaintiff abided by the court-ordered deadline to file the note of issue and defendant has not demonstrated a reason for this Court to vacate it.

Accordingly, it is hereby

ORDERED that defendant's motion to vacate the note of issue is denied.

7/21/2025

DATE



ARLENE P. BLUTH, J.S.C.

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