

**Diaz v Rotavele El., Inc.**

2025 NY Slip Op 33570(U)

September 23, 2025

Supreme Court, New York County

Docket Number: Index No. 157664/2020

Judge: Denis Reo

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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. DENIS REO PART **65****

*Acting Justice*

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INDEX NO. 157664/2020

CHANEL DIAZ,

MOTION DATE 07/23/2025

Plaintiff,

MOTION SEQ. NO. 005

- v -

ROTAVELE ELEVATOR, INC., MAORE ESTATES LLC

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248

were read on this motion to/for DISCOVERY.

Defendant, Rotavele Elevator, Inc. (Rotavele) moves for post note of issue discovery. Plaintiff Chanel Diaz (Plaintiff) opposes the motion stating that Rotavele had ample time to compel the alleged outstanding discovery prior to the filing of the note of issue. Plaintiff further argues that Rotavele has not made a showing of “unusual or unanticipated circumstances” that would warrant post note of issue discovery. For the reasons set forth herein, Rotavele’s motion is DENIED.

**Background**

On August 27, 2019, Plaintiff allegedly tripped and fell on a mis-leveled elevator. As a result of the accident, Plaintiff sustained personal and economic damages.

A preliminary conference was held on February 25, 2021, where Plaintiff was directed to exchange employment and W-2 records for the period of one-year prior to the date of the accident to the present time. Notably, Plaintiff was not directed to exchange tax returns.

Plaintiff was deposed on December 15, 2021 and again on June 2, 2023 after Plaintiff’s bill of particulars was supplemented. After the second deposition, and in response to defendants’

demands, in March of 2024, Plaintiff produced HIPAA compliant authorizations permitting Rotavele to obtain Plaintiff's medical records concerning injuries sustained because of a 2013 slip and fall at a YMCA (2013 Slip and Fall Authorizations). While the authorizations were exchanged in March of 2024, Rotavele claims that it did not receive the relevant medical records until May of 2025.

On November 1, 2024, approximately eight months after the 2013 Slip and Fall Authorizations were provided, Plaintiff filed the note of issue certifying that all discovery was complete. Despite not 1) deposing Plaintiff on the issue of the 2013 accident; 2) having plaintiff's medical records from the 2013 treatment; or 3) having authorizations to obtain Plaintiff's tax returns, Rotavele did not move to vacate the note of issue. Instead, of timely moving to vacate the note of issue, Rotavele responded to co-defendant's motion for summary judgment and moved itself for summary judgment.

Only after summary judgment was denied by Hon. Shlomo Hagler by Decision and Order dated April 11, 2025, did Rotavele seek outstanding discovery including a third deposition of Plaintiff relative to the 2013 slip and fall at the YMCA and copies of Plaintiff's tax returns for the two year period prior to Plaintiff's accident.

For the reasons set forth below, Rotavele's motion for post note of issue discovery is DENIED.

### **Discussion**

CPLR 3101 (a) provides that, "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." However, once a note of issue has been filed, disclosure is more limited (*See* 22 NYCRR 202.21[d][e]). The effect of the filing of a note of issue and accompanying statement of readiness is to bar further discovery (*see Blondell v*

*Malone*, 91 AD2d 1201 [4th Dept 1983] [“no further discovery will be permitted after the statement [of readiness] is filed”). Notwithstanding, 22 NYCRR 202.21 (d) provides that “[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.” To conduct disclosure after the filing of a note of issue, a party must demonstrate “unusual or unanticipated circumstances” that “develop[ed] subsequent to the filing of a note of issue,” which require additional disclosure to prevent “substantial prejudice” (*see Madison v. Sama*, 92 AD3d 607, 607 [1st Dept 2012]; *Schroeder v. IESI NY Corp.*, 24 AD3d 180, 181 [1st Dept 2005]; *Audiovox Corp. v. Benyamini*, 265 AD2d 135, 139-140 [2d Dept 2000]). “A lack of diligence in seeking discovery does not constitute unusual or unanticipated circumstances warranting post-note of issue disclosure.” (*Tirado v Miller*, 75 AD3d 153, 161 [2d Dept 2010]).

Here, there are no “unusual or unanticipated circumstances” warranting post-note of issue disclosure relative to Plaintiff’s 2013 slip and fall at the YMCA. Rotavele was aware of this accident prior to Plaintiff’s filing of the note of issue because in March of 2024 it received HIPAA complaint authorizations to obtain Plaintiff’s medical records relative to the care and treatment rendered after the 2013 slip and fall. Despite having knowledge of this accident and not having all the records, Rotavele did not file a timely motion to vacate Plaintiff’s note of issue in accordance with 22 NYCRR 202.21(d). Rotavele only sought a third deposition of Plaintiff after its motion for summary judgment was denied.

Rotavele’s claim that it did not have the medical records from Plaintiff’s 2013 slip and fall until May of 2025 is unavailing as it had approximately eight months to obtain them prior to Plaintiff filing the note of issue. Additionally, Rotavele knew that these authorizations were

outstanding at the time the note of issue was filed. Despite having this knowledge, Rotavele did not move to vacate the note of issue.

Turning to Rotavele's request for tax documents, the disclosure of a party's tax returns is generally disfavored. (*Matthews Indus. Piping Co. v Mobil Oil Corp.*, 114 AD2d 772 [1st Dept 1985] ["[t]he disclosure of tax returns is disfavored due to their confidential and private nature. Consequently, a party seeking to compel their production must make a strong showing of overriding necessity. An examination of the record herein does not indicate that defendant has sufficiently demonstrated that the information contained in plaintiff's tax returns is indispensable to the instant litigation and unavailable from other sources."] Notwithstanding "[t]o justify the mandatory disclosure of corporate tax returns a party must establish that the information contained within the tax return is 'indispensable to the litigation and unavailable from other sources.'" (*Nanbar Realty Corp. v Pater Realty Co.*, 242 AD2d 208, 209 [1st Dept 1997]).


At this late juncture, Rotavele is not entitled to Plaintiff's tax returns. In *Aikanat v Spruce Assoc., L.P.*, 182 AD3d 437 (1st Dept 2020), the court denied defendants the right to obtain tax returns from plaintiff because while they sought the returns prior to the filing of the note of issue "they took no action to enforce their request until after the note of issue was filed." (*Id* at 437). Here, while Rotavele requested copies of Plaintiff's tax returns prior to the filing of the Note of Issue, it did nothing to enforce this request until seven months after the filing of the Note of Issue. Rotavele has not demonstrated any "unusual or unanticipated circumstances" that "develop[ed] subsequent to the filing of a note of issue" that require this court to order the disclosure of tax documents as required by 22 NYCRR 202.21(d). (*Madison*, 92 AD3d at 607).

Even if Plaintiff demonstrated "unusual or unanticipated circumstances," Plaintiff's tax returns should not be disclosed because Rotavele already received an authorization to obtain

Plaintiff’s employment records and W-2s from plaintiff’s employers. Rotavele has not demonstrated that the tax returns were “indispensable to the litigation” and that the information contained within the returns were unavailable from another source.

Accordingly, it is hereby

ORDERED that Rotavele’s motion for post note of issue discovery is DENIED.

9/23/2025					
DATE			DENIS REO, A.J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE