

Gilzean v City of New York
2026 NY Slip Op 31655(U)
April 16, 2026
Supreme Court, New York County
Docket Number: Index No. 156836/2019
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

HYACINTH GILZEAN,

Plaintiff,

- v -

THE CITY OF NEW YORK, CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.,

Defendant.

-----X

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Plaintiff,

-against-

HALLEN CONSTRUCTION CO INC

Defendant.

-----X

INDEX NO. 156836/2019

MOTION DATE 04/02/2026

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595277/2023

The following e-filed documents, listed by NYSCEF document number (Motion 006) 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 176, 177, 178, 179

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

Defendant Consolidated Edison Company of New York, Inc.'s ("Movant") motion to strike the note of issue is denied.

Background

Plaintiff commenced this action in 2019 arising out of a trip and fall that took place on March 22, 2019. This case was pending before various judges over the years and a preliminary conference order was even uploaded in September 2019 that set an initial note of issue deadline for June 30, 2020 (NYSCEF Doc. No. 58).

More recently, the parties had a conference on October 7, 2025 in which only a few items of outstanding discovery were identified (NYSCEF Doc. No. 154). A note of issue date was set for December 10, 2025 and the order stressed that there would be no adjournments of the cited discovery without prior court approval (*id.*).

Plaintiff then filed the note of issue on October 24, 2025 and this motion followed in November 2025. Movant contends that although the deposition of the third-party defendant was held, as directed in the prior stipulation, on October 9, 2025, Movant wants another deposition of a different third-party defendant witness and there is an outstanding post-EBT demand served on third-party defendant.

In opposition, plaintiff emphasizes that this case is now over five years old and nothing is outstanding from the plaintiff. She complains that this third-party discovery should not needlessly delay this case any further.

Third-party defendant also submits opposition in which it contends that it objects to a further deposition of another witness and that it has not yet received the transcript of the first deposition. It contends that it is undergoing a search for the requested items in the post-EBT demand.

In reply, Movant argues that third-party defendant has been in possession of the deposition transcript since late October 2025 and that the certificate of readiness contained in the note of issue is clearly incorrect.

Discussion

This matter was transferred to the undersigned in April 2026. A review of the docket following the October 2025 conference reveals a curious procedural posture, to say the least. There is an order directing that the December 11, 2025 conference go forward despite the fact

that this motion was already pending (NYSCEF Doc. No. 124). And the order from that conference states in its entirety that “There is a pending motion to strike the Note of Issue. The deadline to make dispositive motions is stayed pending determination on the motion” (NYSCEF Doc. No. 181). There is no mention of any of the outstanding discovery cited in the motion.

Next, there is a discovery order dated February 26, 2026 (bizarrely uploaded on March 10, 2026) that says nothing at all except that the conference was adjourned to April 30, 2026 (NYSCEF Doc. No. 182).

Based on this record, the Court denies the motion in its entirety. Whether or not there was a good reason to strike the note of issue back when this motion was filed in November 2025 is of no moment given that the parties have had more than enough time to complete whatever discovery was allegedly pending. The Court observes that there were no additional discovery motions filed or any mention of the request for a further deposition of third-party defendant in the last two orders.

In any event, plaintiff has now waited almost six years since commencing this action to proceed to trial. The Court declines to be an accomplice in delaying this case for even longer. There is no reason why the parties should not have resolved the purportedly outstanding discovery disputes in the nearly half a year that has passed since the instant motion was filed (and fully briefed).

As the prior judge issued a “stay” of dispositive motions pending the determination of this motion, that stay is now lifted. Because the parties agreed to a 60-day deadline in many prior stipulations, that deadline shall apply here. Any future conferences are cancelled.

Accordingly, it is hereby

ORDERED that the motion to strike the note of issue is denied and the 60-day period to make dispositive motions begins to run from the date of this decision.



4/16/2026
DATE

ARLENE F. 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