

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Gordon v. Field

Gordon, 2026 NY Slip Op 00766 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2024-03716 · Decided February 11, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying Alex and Lana Gordon's motion to review a referee's determination refusing to reopen discovery to obtain documents withheld as privileged. The court held that the trial court providently exercised its discretion in supervising disclosure and denying the application under CPLR 3104(d).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Linda Christopher, J.; William G. Ford, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 11, 2026
DOCKET	2024-03716
DISPOSITION	affirmed
PROCEDURAL POSTURE	Alex Gordon and Lana Gordon appealed from an order denying their motion under CPLR 3104(d) to review a referee's denial of their application to reopen discovery and obtain documents withheld as privileged. Anna Dykshteyn's separate appeal was deemed dismissed.
STANDARD OF REVIEW	A trial court's supervision of disclosure and setting of reasonable terms and conditions are reviewed for improvident exercise of discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Alex Gordon, Lana Gordon, Anna Dykshteyn v. Simon Field, Kim Volman

TOPICS

discovery dispute

appellate procedure

standard of review

civil procedure

PRACTICE AREAS

civil procedure

discovery

QUESTIONS PRESENTED

1. Whether the Supreme Court properly denied the Gordons' CPLR 3104(d) motion to review the referee's denial of their application to reopen discovery for documents withheld as privileged.
2. Whether the trial court providently exercised its discretion in supervising disclosure and declining to reopen discovery.

HOLDINGS

1. The Supreme Court providently exercised its discretion in denying the Gordons' motion under CPLR 3104(d) to review the referee's denial of their application to reopen discovery for documents withheld as privileged.

KEY QUOTATIONS

“The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed”

FACTUAL BACKGROUND

The Gordons sought documents withheld as privileged and relied on privilege logs produced in 2021 and 2022. A referee supervising disclosure conducted an in camera review of documents listed in the 2022 privilege log and made privilege determinations. In September 2023, the referee denied the Gordons' application to reopen discovery to obtain the withheld documents.

PROCEDURAL HISTORY

The plaintiffs commenced an action for, among other things, fraud. The Supreme Court appointed a referee to supervise disclosure, and the referee later denied the Gordons' application to reopen discovery to obtain documents withheld as privileged. The Supreme Court denied the Gordons' motion to review that determination, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Slapo v. Winthrop Univ. Hosp., 186 AD3d 1281, 1282-1283
- Berkowitz v. 29 Woodmere Blvd. Owners', Inc., 135 AD3d 798, 799

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