

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

OPINION

PER CURIAM.

Gordon v Field (2026 NY Slip Op 00766) Gordon v Field 2026 NY Slip Op 00766 Decided on February 11, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 11, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

LINDA CHRISTOPHER WILLIAM G. FORD DONNA-MARIE E. GOLIA, JJ. 2024-03716 (Index No. 609215/18) [*1]Alex Gordon, et al., appellants, et al., plaintiffs, v Simon Field, et al., respondents, et al., defendants. Alex Gordon and Lana Gordon, Woodmere, NY, appellants pro se. Sher Tremonte LLP, New York, NY (Michael Tremonte and Allegra A. Noonan of counsel), for respondents.

DECISION & ORDER In an action, inter alia, to recover damages for fraud, the plaintiffs Alex Gordon and Lana Gordon appeal, and the plaintiff Anna Dykshteyn separately appeals, from an order of the Supreme Court, Nassau County (Timothy S. Driscoll, J.), entered January 5, 2024.

The order, insofar as appealed from by the plaintiffs Alex Gordon and Lana Gordon, denied that branch of their motion which was, in effect, pursuant to CPLR 3104(d) to review so much of an order of the same court (John P. McEntee, Ref.) dated September 13, 2023, as denied their application, in effect, to reopen discovery to obtain documents withheld as privileged.

The appeal by the plaintiff Anna Dykshteyn was deemed dismissed pursuant to 22 NYCRR 1250.10(a). ORDERED that the order entered January 5, 2024, is affirmed insofar as appealed from, with costs. In 2018, the plaintiffs Alex Gordon and Lana Gordon (hereinafter together the Gordons) and another plaintiff commenced this action, inter alia, to recover damages for fraud.

The Supreme Court appointed a referee to supervise disclosure pursuant to CPLR 3104. On July 27, 2021, the defendant Kim Volman produced a privilege log of documents withheld from disclosure (hereinafter the 2021 privilege log).

In an order dated November 18, 2021, the referee directed the parties to complete all disclosure by January 31, 2022. On January 27, 2022, a nonparty attorney produced documents and a privilege log pursuant to a subpoena served by the plaintiffs (hereinafter the 2022 privilege log).

In 2023, the referee conducted an in camera review of the documents listed in the 2022 privilege log and made determinations as to whether the documents were properly withheld as privileged. In September 2023, the Gordons made an application to the referee, in effect, to reopen discovery for the purpose of obtaining documents withheld as privileged in the 2021 and 2022 privilege logs.

In an order dated September 13, 2023, the referee, among other things, denied the application. The Gordons thereafter moved, inter alia, in effect, pursuant to CPLR 3104(d) to review so much of the order dated September 13, 2023, as denied their application.

The Supreme Court denied that branch of the motion, and the Gordons appeal. Pursuant to CPLR 3104(d), any party may make a motion to review a referee's order regarding disclosure. 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, regardless of the burden of proof." "However, unlimited disclosure is not mandated, and the rules provide that the court may issue a protective order denying, limiting, conditioning or regulating the use of any disclosure device to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts" (*Slapo v Winthrop Univ.*

Hosp., 186 AD3d 1281, 1282-1283 [internal quotation marks omitted], citing CPLR 3103[a]; see *Berkowitz v 29 Woodmere Blvd. Owners', Inc.*, 135 AD3d 798, 799). "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" (*Berkowitz v 29 Woodmere Blvd.*

Owners', Inc., 135 AD3d at 799 [internal quotation marks omitted]; see *Slapo v Winthrop Univ. Hosp.*, 186 AD3d at 1283). Here, the Supreme Court providently exercised its discretion in denying that branch of the Gordons' motion which was, in effect, pursuant to CPLR 3104(d) to review so much of the order dated September 13, 2023, as denied their application, in effect, to reopen discovery to obtain documents withheld as privileged.

The Gordons' remaining contentions are without merit. CHAMBERS, J.P., CHRISTOPHER, FORD and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court