

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Robinson v. Redleaf Capital LLC

2026 NY Slip Op 01863 (1st Dep't 2026) · No. Case No. 2025-02516; Appeal No. 6209 · Decided March 26,
2026

SUMMARY

The Appellate Division, First Department affirmed the denial of Dezer Properties 48 LLC’s motion to compel Redleaf Capital LLC and Superior Management Incorporated to produce a previously deposed witness for additional questioning about subsequent sidewalk repairs. The court held that the motion was procedurally deficient because Dezer did not make the required good-faith efforts to resolve the dispute and did not show good cause, and it further held that the requested discovery was not shown to be material and necessary.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; González, J.; Mendez, J.; O'Neill Levy, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 26, 2026
DOCKET	Case No. 2025-02516; Appeal No. 6209
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dezer Properties 48 LLC appealed from an order denying its CPLR 3124 motion to compel Redleaf Capital LLC and Superior Management Incorporated to produce a previously deposed witness for additional questioning. Because the order was not appealable as of right, the Appellate Division treated the notice of appeal as an application for leave to appeal, granted leave, and affirmed.
STANDARD OF REVIEW	The court reviewed the discovery ruling for abuse of discretion and considered whether the discovery sought was material and necessary. It also exercised discretion to treat the notice of appeal as an application for leave to appeal.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion

PARTIES

Dezer Properties 48 LLC v. Redleaf Capital LLC, Superior Management Incorporated

TOPICS

discovery dispute

appellate procedure

interlocutory appeal

premises liability

civil procedure

PRACTICE AREAS

civil procedure

personal injury

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appellate procedure

QUESTIONS PRESENTED

1. Whether the notice of appeal from the discovery order should be treated as an application for leave to appeal under CPLR 5701(c).
2. Whether Dezer's motion to compel a further deposition was procedurally deficient because Dezer failed to make good-faith efforts to resolve the dispute before moving.
3. Whether Supreme Court providently exercised its discretion in precluding further deposition questioning concerning post-accident remedial measures because Dezer failed to show that the discovery was material and necessary.

HOLDINGS

1. Although the order was not appealable as of right, the court treated the notice of appeal as an application for leave to appeal under CPLR 5701(c) and granted leave.
2. A motion to compel discovery is procedurally deficient when the movant fails to make good-faith efforts to resolve the dispute without motion practice and fails to show good cause for that failure.
3. The trial court providently exercised its discretion in denying a further deposition on post-accident remedial measures because Dezer failed to demonstrate that the requested discovery was material and necessary to the defense.

KEY QUOTATIONS

*“Dezer's motion to compel Redleaf and Superior Management to produce their witness for a further deposition to respond to the questions about remedial measures was procedurally deficient and thus, denial was warranted.” (at *1)*

*“On the merits, we find that the court providently exercised its discretion in precluding the further deposition of the witness on the issue of post-accident remedial measures and that Dezer failed to demonstrate that the discovery sought was material and necessary to the defense of the action” (at *1)*

FACTUAL BACKGROUND

Plaintiff alleged that he tripped over a raised sidewalk flag in front of 46 and 48 West 21st Street in Manhattan. Redleaf Capital, owner of 46 West 21st Street, and Superior Management, its property manager, produced a witness for deposition by Dezer Properties 48 LLC, the owner of 48 West 21st Street. During the deposition,

counsel instructed the witness not to answer questions concerning subsequent remedial measures to repair the sidewalk.

PROCEDURAL HISTORY

In a personal-injury action arising from a trip over a raised sidewalk flag, Dezer moved to compel Redleaf and Superior Management to produce their deposition witness for further questioning about post-accident remedial measures. Supreme Court, Bronx County, denied the motion. The First Department granted leave to appeal and affirmed, holding that the motion was procedurally deficient and unsupported on the merits.

DISPOSITION

affirmed

CASES CITED

- *Marrero v. Modern Food Ctr. Inc.*, 209 AD3d 533, 533-534 (1st Dep't 2022)
- *Loeb v. Assara N.Y. I L.P.*, 118 AD3d 457, 457-458 (1st Dep't 2014)
- *Alvarez v. 471 W. 144 LLC*, 243 AD3d 522, 522 (1st Dep't 2025)

OPINION

PER CURIAM.

Robinson v Redleaf Capital LLC (2026 NY Slip Op 01863) Robinson v Redleaf Capital LLC 2026 NY Slip Op 01863 Decided on March 26, 2026 Appellate Division, First 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 and Entered: March 26, 2026 Before: Webber, J.P., González, Mendez, O'Neill Levy, Hagler, JJ. Index No. 810417/23|Appeal No. 6209|Case No. 2025-02516| [*1]Herschell Robinson, Plaintiff, v Redleaf Capital LLC et al., Respondents, Dezer Properties 48 LLC, Appellant.

Goetz Schenker Blee & Wiederhorn LLP, New York (Lisa De Lindsay of counsel), for appellant. Nicoletti Spinner Ryan Gulino Pinter LLP, New York (Matthew G. Corcoran of counsel), for respondents. Order, Supreme Court, Bronx County (Marissa Soto, J.), entered on or about February 18, 2025, which, to the extent appealed from as limited by the briefs, denied defendant Dezer Properties 48 LLC's motion pursuant to CPLR 3124 to compel defendants Redleaf Capital LLC and Superior Management Incorporated to produce their previously deposed deposition witness to respond to additional questions, unanimously affirmed, without costs.

Although the order, insofar as appealed from, is not appealable as of right (see *Marrero v Modern Food Ctr. Inc.*, 209 AD3d 533, 533 [1st Dept 2022]), we deem the notice of appeal to be an application for leave to appeal pursuant to CPLR 5701(c), and grant such leave (see *id.* at 533-534).

In this trip and fall case, plaintiff alleges that he tripped over a raised sidewalk flag in front of 46 and 48 West 21st street in Manhattan. Redleaf Capital, the owner of 46 West 21st street, and Superior Management, its property manager, produced a witness for a deposition conducted by Dezer, the owner of 48 West 21st Street. During the deposition, counsel directed Redleaf and Superior Management's witness not to answer questions posed by Dezer's counsel about subsequent remedial measures taken to repair the sidewalk.

Dezer's motion to compel Redleaf and Superior Management to produce their witness for a further deposition to respond to the questions about remedial measures was procedurally deficient and thus, denial was warranted. Dezer concedes that during the 45 days that elapsed between the deposition and the filing of its motion to compel, it made no good-faith efforts to resolve the dispute without motion practice and that it failed to provide good cause as to why no efforts to do so were made (see Uniform Rules for Trial Cts [22 NYCRR] § 202.7[c]; see e.g. *Loeb v Assara* N.Y.

I L.P., 118 AD3d 457, 457-458 [1st Dept 2014]). On the merits, we find that the court providently exercised its discretion in precluding the further deposition of the witness on the issue of post-accident remedial measures and that Dezer failed to demonstrate that the discovery sought was material and necessary to the defense of the action, as the ownership of the respective properties abutting the sidewalk is undisputed (see *Alvarez v 471 W. 144 LLC*, 243 AD3d 522, 522 [1st Dept 2025]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 26, 2026