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

U.S. Bank N.A. v. Islam

2026 NY Slip Op 03015 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2022-05495, 2022-05496 · Decided May 13, 2026

SUMMARY

The New York Appellate Division, Second Department, held that the plaintiff failed to take proceedings for entry of a default judgment within the one-year period required by CPLR 3215(c) in a mortgage foreclosure action. The court dismissed the appeal from the order, reversed the judgment of foreclosure and sale, granted the defendant's motion to dismiss the complaint as abandoned, and denied the plaintiff's request for a judgment of foreclosure and sale.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Carl J. Landicino, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	May 13, 2026
DOCKET	2022-05495, 2022-05496
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an order denying the defendant's CPLR 3215(c) motion to dismiss the mortgage-foreclosure complaint as abandoned and granting the plaintiff's cross-motion to vacate a conditional dismissal order and obtain a judgment of foreclosure and sale, and from the resulting judgment of foreclosure and sale.
STANDARD OF REVIEW	Questions of statutory interpretation and the application of CPLR 3215(c) were reviewed as matters of law.
PRECEDENTIAL VALUE	published
PARTIES	Mohammed Manzurul Islam v. U.S. Bank National Association

TOPICS

default civil procedure appellate procedure foreclosure mortgages

PRACTICE AREAS

mortgage foreclosure civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the appeal from the May 25, 2022 order had to be dismissed because the right to a direct appeal from the order terminated upon entry of the judgment of foreclosure and sale.
2. Whether the foreclosure complaint against the defendant had to be dismissed as abandoned under CPLR 3215(c) because the plaintiff failed to take proceedings for entry of a default judgment within one year after the defendant's default.
3. Whether the plaintiff's request for judicial intervention seeking a foreclosure settlement conference tolled or satisfied the one-year period under CPLR 3215(c).
4. Whether the plaintiff established sufficient cause to avoid dismissal under CPLR 3215(c) by offering a reasonable excuse for the delay.

HOLDINGS

1. The appeal from the May 25, 2022 order must be dismissed because the right to a direct appeal from that order terminated when the judgment of foreclosure and sale was entered; the issues raised on the order were reviewable on the appeal from the judgment.
2. When a plaintiff fails to take proceedings for entry of a default judgment within one year after a defendant's default, CPLR 3215(c) requires dismissal of the claim as abandoned unless sufficient cause is shown.
3. The plaintiff's request for judicial intervention seeking a foreclosure settlement conference did not constitute proceedings for entry of judgment and did not toll the one-year deadline under CPLR 3215(c).
4. The plaintiff failed to establish sufficient cause to avoid dismissal because its change of attorney was not a reasonable excuse for the delay, particularly where the change occurred after the one-year period had expired.

KEY QUOTATIONS

> *"The language of CPLR 3215(c) is not, in the first instance, discretionary, but mandatory, inasmuch as courts 'shall' dismiss claims (CPLR 3215[c]) for which default judgments are not sought within the requisite one-year period, as those claims are then deemed abandoned"* ([*1])

> *"As such, the filing of the request for judicial intervention did not constitute the taking of proceedings for the entry of a judgment pursuant to CPLR 3215(c) and did not toll the one-year deadline to do so"* ([*2])

FACTUAL BACKGROUND

The plaintiff commenced a mortgage-foreclosure action in 2012 involving residential property in Brooklyn. The defendant was served under CPLR 308(2), but he did not timely answer or move for relief; service was complete on June 17, 2012, and his default occurred on July 17, 2012. The plaintiff did not move for leave to enter a default judgment and for an order of reference until March 2015, more than one year after the default. The plaintiff later attributed the delay in part to a change of attorney, but that change occurred after the statutory one-year period.

PROCEDURAL HISTORY

The plaintiff commenced a mortgage-foreclosure action in 2012. The defendant did not timely answer or otherwise appear. The plaintiff moved for a default judgment and an order of reference in March 2015, and the Supreme Court granted that motion in June 2015. After the Supreme Court conditionally directed dismissal as abandoned in 2019, the defendant moved in 2021 for dismissal under CPLR 3215(c), while the plaintiff cross-moved to vacate the conditional dismissal and obtain a judgment of foreclosure and sale. The Supreme Court denied the defendant's motion and granted the plaintiff's cross-motion in May 2022.

DISPOSITION

reversed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- US Bank N.A. v. Pane, 237 AD3d 1237, 1238-1239
- Deutsche Bank Natl. Trust Co. v. O'Connor, 223 AD3d 872, 874
- Wells Fargo Bank v. Aucapina, 193 AD3d 1106, 1109-1110
- HSBC Bank USA, N.A. v. Whaley, 197 AD3d 1245, 1247-1248
- HSBC Bank USA, N.A. v. Lem, 194 AD3d 1027, 1029
- Chase Home Fin., LLC v. Morris, 235 AD3d 827, 829
- Deutsche Bank Natl. Trust Co. v. Bakarey, 198 AD3d 718, 722

OPINION

PER CURIAM.

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v Islam</h1> <p>2026 NY Slip Op 03015</p> <p>May 13, 2026</p> <p>Appellate Division, Second Department</p> <p>Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</p> <p>This decision is uncorrected and subject to revision before publication in the Official Reports.</p> </div> <div> <p>U.S.

Bank National Association, etc., respondent,</p> <p>v</p> <p>Mohammed Manzurul Islam, appellant, et al., defendants.</p> </div> <p>Supreme Court of the State of New York, Appellate Division, Second Judicial Department</p> <p>Decided on May 13, 2026</p> <p>2022-05495, 2022-05496, (Index No. 10505/12)</p> <p>Betsy Barros, J.P.</p> <p>Barry E. Warhit</p> <p>Carl J. Landicino</p> <p>Laurence L. Love, JJ.</p> <div> <p>Fadullon Dizon Krul, LLP, Jericho, NY (Juan Paolo F. Dizon and Alexander Krul of counsel), for appellant.</p> <p>McCabe, Weisberg & Conway, LLC, Melville, NY (Jamie C. Krapf of counsel), for respondent.</p> </div> [*1] <p>DECISION & ORDER</p> <p>In an action to foreclose a mortgage, the defendant Mohammed Manzurul Islam appeals from (1) an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated May 25, 2022, and (2) a judgment of foreclosure and sale of the same court also dated May 25, 2022.

The order, in effect, denied that defendant's motion pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned and granted the plaintiff's cross-motion to vacate a conditional order of dismissal of the same court (Ingrid Joseph, J.) dated September 12, 2019, and for a judgment of foreclosure and sale.

The judgment of foreclosure and sale directed the sale of the subject property.</p> <p>ORDERED that the appeal from the order is dismissed; and it is further,</p> <p>ORDERED that the judgment of foreclosure and sale is reversed, on the law, the motion of the defendant Mohammed Manzurul Islam pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned is granted, that branch of the plaintiff's cross-motion which was for a judgment of foreclosure and sale is denied, and the order dated May 25, 2022, is modified accordingly; and it is further,</p> <p>ORDERED that one bill of costs is awarded to the defendant Mohammed Manzurul Islam.</p> <p>The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment of foreclosure and sale in the action (<i>see</i> <i>Matter of Aho</i>, 39 NY2d 241, 248).

The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment of foreclosure and sale (<i>see</i> CPLR 5501[a][1]).</p> <p>The plaintiff commenced this action in 2012 against, among others, Mohammed Manzurul Islam (hereinafter the defendant) to foreclose a mortgage on certain residential property [*2]located in Brooklyn.

The defendant failed to timely answer the complaint or otherwise appear in the action. In March 2015, the plaintiff moved, among other things, for leave to enter a default judgment against the defendant and for an order of reference. By order dated June 4, 2015, the court granted the plaintiff's motion and referred the matter to a referee to compute the amount due to the plaintiff.

Thereafter, in an order dated September 12, 2019, the Supreme Court conditionally directed dismissal of the complaint as abandoned.</p> <p>In February 2021, the defendant moved pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned.

The plaintiff cross-moved to vacate the order dated September 12, 2019, and for a judgment of foreclosure and sale. In an order dated May 25, 2022, the Supreme Court, in effect, denied the defendant's motion and granted the plaintiff's cross-motion.

In a judgment of foreclosure and sale also dated May 25, 2022, the court directed the sale of the property. The defendant appeals.</p> <p>CPLR 3215(c) provides that "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after [a defendant's] default, the court shall not enter judgment but shall dismiss the complaint as abandoned... unless sufficient cause is shown why the complaint should not be dismissed" (<i>see</i> <i>US Bank N.A. v Pane</i>, 237 AD3d 1237, 1238).

"The language of CPLR 3215(c) is not, in the first instance, discretionary, but mandatory, inasmuch as courts 'shall' dismiss claims (CPLR 3215[c]) for which default judgments are not sought within the requisite one-year period, as those claims are then deemed abandoned" (<i>US Bank N.A. v Pane</i>, 237 AD3d at 1238 [internal quotation marks omitted]; <i>see</i> <i>Deutsche Bank Natl.

Trust Co. v O'Connor</i>, 223 AD3d 872, 874). "To establish sufficient cause, the plaintiff must proffer a reasonable excuse for the delay in timely moving for a default judgment and... demonstrate that the cause of action is potentially meritorious" (<i>US Bank N.A. v Pane</i>, 237 AD3d at 1238 [internal quotation marks omitted]; <i>see</i> <i>Deutsche Bank Natl.

Trust Co. v O'Connor</i>, 223 AD3d at 874).</p> <p>The defendant, having been served pursuant to CPLR 308(2), was required to serve an answer or make a motion having the effect of extending the time to answer within 30 days after service was complete (<i>see</i> CPLR 320[a]; <i>Wells Fargo Bank v Aucapina</i>, 193 AD3d 1106, 1109). Pursuant to CPLR 308(2), service is complete 10 days after the filing of proof of service with the clerk of the court (<i>see</i> <i>Wells Fargo Bank v Aucapina</i>, 193 AD3d at 1109).

Since proof of service was filed on June 7, 2012, service was complete on June 17, 2012 (<i>see</i> CPLR 308[2]). The defendant was required to answer the complaint or otherwise move for relief by July 17, 2012, but he did not do so and was in default as of that date (<i>see</i> CPLR 3215; <i>Wells Fargo Bank v Aucapina</i>, 193 AD3d at 1110).

Thus, the plaintiff had one year from July 17, 2012, to take proceedings for the entry of judgment against the defendant (<i>see </i>CPLR 3215[c]; <i>US Bank N.A. v Pane</i>, 237 AD3d at 1239; <i>Wells Fargo Bank v Aucapina</i>, 193 AD3d at 1110).

However, the plaintiff did not take such proceedings until over two years later, when it moved, inter alia, for leave to enter a default judgment against the defendant and for an order of reference in March 2015. Thus, the plaintiff failed to take proceedings for the entry of judgment within one year after the defendant's default.

Although the plaintiff filed a request for judicial intervention requesting a foreclosure settlement conference within the one-year period after the defendant's default, a settlement conference was not required in this case because the defendant did not reside at the property subject to foreclosure (<i>see</i> CPLR 3408[a][1]).

As such, the filing of the request for judicial intervention did not constitute the taking of proceedings for the entry of a judgment pursuant to CPLR 3215(c) and did not toll the one-year deadline to do so (<i>see</i> <i>US Bank N.A. v Pane</i>, 237 AD3d at 1239).</p> <p>Moreover, the plaintiff failed demonstrate a reasonable excuse for its failure to timely take proceedings for the entry of judgment.

Contrary to the plaintiff's contention, the plaintiff's change of attorney does not constitute a reasonable excuse for its delay in taking proceedings for the entry of judgment under these circumstances, and in any event, the change of attorney occurred after the statutory one year period expired (<i>see</i> <i>HSBC Bank USA, N.A. v Whaley</i>, 197 AD3d 1245, 1247-1248; <i>HSBC Bank USA, N.A. v Lem</i>, 194 AD3d 1027, 1029).

Since the plaintiff failed to proffer a reasonable excuse for its delay, this Court need not consider whether the plaintiff had a potentially meritorious cause of action (<i>see</i> <i>Chase Home Fin., LLC v Morris</i>, 235 AD3d 827, 829; <i>Deutsche Bank Natl. Trust Co. v Bakarey</i>, 198 AD3d 718, 722).</p> <p>Accordingly, the Supreme Court should have granted the defendant's motion pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned and denied that branch of the plaintiff's cross-motion which was for a judgment of foreclosure and sale.</p> <p>The parties' remaining contentions either are without merit or need not be reached in light of our determination.</p> <p>BARROS, J.P., WARHIT, LANDICINO and LOVE, JJ., concur.</p> <p>ENTER:</p> <p>Darrell M. Joseph</p> <p>Clerk of the Court</p> </div>

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PER CURIAM.

U.S. Bank N.A. v Islam - 2026 NY Slip Op 03015 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions U.S. Bank N.A. v Islam 2026 NY Slip Op 03015 May 13, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. U.S. Bank National Association, etc., respondent, v Mohammed Manzurul Islam, appellant, et al., defendants. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on May 13, 2026 2022-05495, 2022-05496, (Index No. 10505/12) Betsy Barros, J.P.

Barry E. Warhit Carl J. Landicino Laurence L. Love, JJ. Fadullon Dizon Krul, LLP, Jericho, NY (Juan Paolo F. Dizon and Alexander Krul of counsel), for appellant. McCabe, Weisberg & Conway, LLC, Melville, NY (Jamie C. Krapf of counsel), for respondent. [*1] DECISION & ORDER In an action to foreclose a mortgage, the defendant Mohammed Manzurul Islam appeals from (1) an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated May 25, 2022, and (2) a judgment of foreclosure and sale of the same court also dated May 25, 2022.

The order, in effect, denied that defendant's motion pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned and granted the plaintiff's cross-motion to vacate a conditional order of dismissal of the same court (Ingrid Joseph, J.) dated September 12, 2019, and for a judgment of foreclosure and sale.

The judgment of foreclosure and sale directed the sale of the subject property. ORDERED that the appeal from the order is dismissed; and it is further, ORDERED that the judgment of foreclosure and sale is reversed, on the law, the motion of the defendant Mohammed Manzurul Islam pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned is granted, that branch of the plaintiff's cross-motion which was for a judgment of foreclosure and sale is denied, and the order dated May 25, 2022, is modified accordingly; and it is further, ORDERED that one bill of costs is awarded to the defendant Mohammed Manzurul Islam.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment of foreclosure and sale in the action (see Matter of Aho, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment of foreclosure and sale (see CPLR 5501[a][1]).

The plaintiff commenced this action in 2012 against, among others, Mohammed Manzurul Islam (hereinafter the defendant) to foreclose a mortgage on certain residential property [*2] located in Brooklyn. The defendant failed to timely answer the complaint or otherwise appear in the action.

In March 2015, the plaintiff moved, among other things, for leave to enter a default judgment against the defendant and for an order of reference. By order dated June 4, 2015, the court granted the plaintiff's motion and referred the matter to a referee to compute the amount due to the plaintiff. Thereafter, in an order dated September 12, 2019, the Supreme Court conditionally directed dismissal of the complaint as abandoned.

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In an order dated May 25, 2022, the Supreme Court, in effect, denied the defendant's motion and granted the plaintiff's cross-motion. In a judgment of foreclosure and sale also dated May 25, 2022, the court directed the sale of the property.

The defendant appeals. CPLR 3215(c) provides that "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after [a defendant's] default, the court shall not enter judgment but shall dismiss the complaint as abandoned... unless sufficient cause is shown why the complaint should not be dismissed" (see US Bank N.A. v Pane, 237 AD3d 1237, 1238).

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The defendant, having been served pursuant to CPLR 308(2), was required to serve an answer or make a motion having the effect of extending the time to answer within 30 days after service was complete (see CPLR 320[a]; Wells Fargo Bank v Aucapina, 193 AD3d 1106, 1109). Pursuant to CPLR 308(2), service is complete 10 days after the filing of proof of service with the clerk of the court (see Wells Fargo Bank v Aucapina, 193 AD3d at 1109).

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Thus, the plaintiff had one year from July 17, 2012, to take proceedings for the entry of judgment against the defendant (see CPLR 3215[c]; US Bank N.A. v Pane, 237 AD3d at 1239; Wells Fargo Bank v Aucapina, 193 AD3d at 1110).

However, the plaintiff did not take such proceedings until over two years later, when it moved, inter alia, for leave to enter a default judgment against the defendant and for an order of reference in March 2015. Thus, the plaintiff failed to take proceedings for the entry of judgment within one year after the defendant's default.

Although the plaintiff filed a request for judicial intervention requesting a foreclosure settlement conference within the one-year period after the defendant's default, a settlement conference was not required in this case because the defendant did not reside at the property subject to foreclosure (see CPLR 3408[a][1]).

As such, the filing of the request for judicial intervention did not constitute the taking of proceedings for the entry of a judgment pursuant to CPLR 3215(c) and did not toll the one-year deadline to do so (see US Bank N.A. v Pane, 237 AD3d at 1239).

Moreover, the plaintiff failed demonstrate a reasonable excuse for its failure to timely take proceedings for the entry of judgment. Contrary to the plaintiff's contention, the plaintiff's change of attorney does not constitute a reasonable excuse for its delay in taking proceedings for the entry of judgment under these circumstances, and in any event, the change of attorney occurred after the statutory one year period expired (see HSBC Bank USA, N.A. v Whaley, 197 AD3d 1245, 1247-1248; HSBC Bank USA, N.A. v Lem, 194 AD3d 1027, 1029).

Since the plaintiff failed to proffer a reasonable excuse for its delay, this Court need not consider whether the plaintiff had a potentially meritorious cause of action (see Chase Home Fin., LLC v Morris, 235 AD3d 827, 829; Deutsche Bank Natl. Trust Co. v Bakarey, 198 AD3d 718, 722).

Accordingly, the Supreme Court should have granted the defendant's motion pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned and denied that branch of the plaintiff's cross-motion which was for a judgment of foreclosure and sale.

The parties' remaining contentions either are without merit or need not be reached in light of our determination. BARROS, J.P., WARHIT, LANDICINO and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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PER CURIAM.

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Bank National Association, etc., respondent,</p> <p>v</p> <p>Mohammed Manzurul Islam, appellant, et al., defendants.</p> </div> <p>Supreme Court of the State of New York, Appellate Division, Second Judicial Department</p> <p>Decided on May 13, 2026</p> <p>2022-05495, 2022-05496, (Index No. 10505/12)</p> <p>Betsy Barros, J.P.</p> <p>Barry E. Warhit</p> <p>Carl J. Landicino</p> <p>Laurence L. Love, JJ.</p> <div> <p>Fadullon Dizon Krul, LLP, Jericho, NY (Juan Paolo F. Dizon and Alexander Krul of counsel), for appellant.</p> <p>McCabe, Weisberg & Conway, LLC, Melville, NY (Jamie C. Krapf of counsel), for respondent.</p> </div> [*1] <p>DECISION & ORDER</p> <p>In an action to foreclose a mortgage, the defendant Mohammed Manzurul Islam appeals from (1) an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated May 25, 2022, and (2) a judgment of foreclosure and sale of the same court also dated May 25, 2022.

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Thus, the plaintiff had one year from July 17, 2012, to take proceedings for the entry of judgment against the defendant (<i>see </i>CPLR 3215[c]; <i>US Bank N.A. v Pane</i>, 237 AD3d at 1239; <i>Wells Fargo Bank v Aucapina</i>, 193 AD3d at 1110).

However, the plaintiff did not take such proceedings until over two years later, when it moved, inter alia, for leave to enter a default judgment against the defendant and for an order of reference in March 2015. Thus, the plaintiff failed to take proceedings for the entry of judgment within one year after the defendant's default.

Although the plaintiff filed a request for judicial intervention requesting a foreclosure settlement conference within the one-year period after the defendant's default, a settlement conference was not required in this case because the defendant did not reside at the property subject to foreclosure (<i>see</i> CPLR 3408[a][1]).

As such, the filing of the request for judicial intervention did not constitute the taking of proceedings for the entry of a judgment pursuant to CPLR 3215(c) and did not toll the one-year deadline to do so (<i>see</i> <i>US Bank N.A. v Pane</i>, 237 AD3d at 1239).</p> <p>Moreover, the plaintiff failed demonstrate a reasonable excuse for its failure to timely take proceedings for the entry of judgment.

Contrary to the plaintiff's contention, the plaintiff's change of attorney does not constitute a reasonable excuse for its delay in taking proceedings for the entry of judgment under these circumstances, and in any event, the change of attorney occurred after the statutory one year period expired (<i>see</i> <i>HSBC Bank USA, N.A. v Whaley</i>, 197 AD3d 1245, 1247-1248; <i>HSBC Bank USA, N.A. v Lem</i>, 194 AD3d 1027, 1029).

Since the plaintiff failed to proffer a reasonable excuse for its delay, this Court need not consider whether the plaintiff had a potentially meritorious cause of action (<i>see</i> <i>Chase Home Fin., LLC v Morris</i>, 235 AD3d 827, 829; <i>Deutsche Bank Natl. Trust Co. v Bakarey</i>, 198 AD3d 718, 722).</p> <p>Accordingly, the Supreme Court should have granted the defendant's motion pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned and denied that branch of the plaintiff's cross-motion which was for a judgment of foreclosure and sale.</p> <p>The parties' remaining contentions either are without merit or need not be reached in light of our determination.</p> <p>BARROS, J.P., WARHIT, LANDICINO and LOVE, JJ., concur.</p> <p>ENTER:</p> <p>Darrell M. Joseph</p> <p>Clerk of the Court</p> </div>