

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

**275 Clermont, LLC v. Johnson**

2022 NY Slip Op 05070 (N.Y. Ct. App. 2022) · No. 2019-06789 · Decided August 31, 2022

**SUMMARY**

The Appellate Division, Second Department dismissed Cecelia Johnson’s appeal from a judgment declaring 275 Clermont, LLC the fee owner of real property. The court held that no appeal lies from a judgment entered upon the appellant’s default and declined to review issues that could have been raised in earlier appeals dismissed for failure to perfect.

**CASE DETAILS**

|                              |                                                                                                                                                                                                                                              |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                       |
| <b>WRITING FOR THE COURT</b> | Angela G. Iannacci, J.P.; Joseph A. Zayas, J.; Lara J. Genovesi, J.; William G. Ford, J.                                                                                                                                                     |
| <b>JURISDICTION</b>          | New York                                                                                                                                                                                                                                     |
| <b>DECIDED</b>               | August 31, 2022                                                                                                                                                                                                                              |
| <b>DOCKET</b>                | 2019-06789                                                                                                                                                                                                                                   |
| <b>DISPOSITION</b>           | dismissed                                                                                                                                                                                                                                    |
| <b>PROCEDURAL POSTURE</b>    | Cecelia Johnson appealed from a Kings County Supreme Court judgment entered upon her default after an inquest on damages in an action to quiet title. The Appellate Division granted the plaintiff’s motion to dismiss the appeal.           |
| <b>STANDARD OF REVIEW</b>    | The court applied the rule governing appellate review of judgments entered upon default and exercised discretionary control over whether to review issues that could have been raised in an earlier appeal dismissed for failure to perfect. |
| <b>PRECEDENTIAL VALUE</b>    | Published intermediate appellate opinion                                                                                                                                                                                                     |
| <b>PARTIES</b>               | Cecelia Johnson v. 275 Clermont, LLC                                                                                                                                                                                                         |

**TOPICS**

appellate procedure

default judgment

quiet title

summary judgment

civil procedure

## PRACTICE AREAS

Appellate procedure

Real property

Civil procedure

## QUESTIONS PRESENTED

1. Whether an appeal lies from a judgment entered upon the default of the appealing party.
2. Whether the Appellate Division should review challenges to earlier orders when those issues could have been raised in prior appeals that were dismissed for failure to perfect.

## HOLDINGS

1. No appeal lies from a judgment entered upon the default of the appealing party.
2. The court declined to exercise its inherent discretion to review issues concerning earlier orders when those issues could have been raised in prior appeals that were dismissed for failure to perfect.

## KEY QUOTATIONS

*“No appeal lies from a judgment entered upon the default of the appealing party”* ([\*2])

*“As a general rule, we do not consider issues raised on a subsequent appeal that were raised, or could have been raised, on an earlier appeal which was dismissed for lack of prosecution, although we have inherent jurisdiction to do so”* ([\*2])

## FACTUAL BACKGROUND

The action concerned title to real property in Brooklyn. The Supreme Court granted 275 Clermont summary judgment on its quiet-title claim and dismissed Johnson's fifth counterclaim. Johnson later defaulted in opposing a motion to strike her answer and preclude evidence and failed to appear at trial, after which the court entered judgment declaring 275 Clermont the fee owner.

## PROCEDURAL HISTORY

The Supreme Court granted the plaintiff summary judgment on its quiet-title claim and dismissed Johnson's fifth counterclaim. After Johnson defaulted in opposing a motion to strike her answer and preclude evidence, and failed to appear at trial, the court conducted an inquest on damages and entered judgment declaring the plaintiff the fee owner of the property. Johnson appealed. The Appellate Division dismissed the appeal because no appeal lies from a judgment entered upon the appellant's default and because the issues concerning earlier orders could have been raised in prior appeals that were dismissed for failure to perfect.

## DISPOSITION

dismissed

## CASES CITED

- Kokolis v Wallace, 202 AD3d 948

- U.S. Bank N.A. v Fuller-Watson, 197 AD3d 764, 766
- Wells Fargo Bank, N.A. v Harrigan, 179 AD3d 1142, 1144
- Rubeo v National Grange Mut. Ins. Co., 93 NY2d 750
- Bray v Cox, 38 NY2d 350
- Meak v Properties Pursuit, Inc., 186 AD3d 701, 702

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