

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

U.S. Bank Trust, N.A. v. Donohue

2026 NY Slip Op 01396 · No. 2024-08759 · Decided March 11, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order that sua sponte dismissed a mortgage foreclosure action as abandoned under CPLR 3215(c) and on equitable grounds. Because the original plaintiff had obtained an order of reference and a judgment of foreclosure and sale within months of the defendants’ default, the action was not abandoned under CPLR 3215(c), and the later delay did not support dismissal. The court also held that the plaintiff established the requirements for entry of a default judgment and an order of reference.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Paul Wooten, J.; Helen Voutsinas, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 11, 2026
DOCKET	2024-08759
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order in a mortgage-foreclosure action that denied its unopposed motion for leave to enter a default judgment and for an order of reference, and that sua sponte directed dismissal of the complaint as abandoned under CPLR 3215(c) and on equitable grounds.
STANDARD OF REVIEW	The order was reviewed for legal error; the Appellate Division also reviewed whether the Supreme Court possessed statutory or inherent authority to dismiss the action sua sponte.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	U.S. Bank Trust, N.A. v. Michael Donohue, Other defendants

TOPICS

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PRACTICE AREAS

mortgage foreclosure

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QUESTIONS PRESENTED

1. Whether the foreclosure action was subject to dismissal as abandoned under CPLR 3215(c) when the original plaintiff initiated proceedings for entry of judgment within one year after defendants' default.
2. Whether the Supreme Court could sua sponte dismiss the complaint on equitable grounds because the plaintiff delayed moving for an order of reference after being directed to do so.
3. Whether CPLR 3216 or 22 NYCRR 202.27 supplied a statutory basis for dismissal.
4. Whether the plaintiff established the prerequisites for leave to enter a default judgment and for an order of reference under CPLR 3215.

HOLDINGS

1. A plaintiff does not abandon an action within the meaning of CPLR 3215(c) when proceedings for entry of judgment were initiated within one year after the defendants' default; the plaintiff need not obtain the judgment within that one-year period or account for later periods of delay.
2. A court may not sua sponte dismiss a complaint merely because the plaintiff failed to move for an order of reference by an arbitrary court-imposed date; dismissal sua sponte is permissible only sparingly and when extraordinary circumstances exist.
3. CPLR 3216 could not authorize dismissal because issue had never been joined, a statutory precondition to dismissal under that provision.
4. 22 NYCRR 202.27 did not authorize dismissal because the dismissal was not based on the plaintiff's failure to appear at a scheduled calendar call or conference.
5. The plaintiff was entitled to leave to enter a default judgment and to an order of reference because it submitted proof of service, proof of the facts constituting the mortgage claim, and proof of defendants' default.

KEY QUOTATIONS

“As long as the plaintiff has initiated proceedings for the entry of a judgment within one year of the default, there is no basis for dismissal of the complaint pursuant to CPLR 3215(c)” (2026 NY Slip Op 01396 at [2])

“A court's power to dismiss a complaint, sua sponte, is to be used sparingly and only when extraordinary circumstances exist to warrant dismissal” (2026 NY Slip Op 01396 at [2])

“A court may not dismiss an action based on neglect to prosecute unless the CPLR 3216 statutory preconditions to dismissal are met” (2026 NY Slip Op 01396 at [2])

“The procedural device of dismissing a complaint for undue delay is a legislative creation, and courts do not possess the inherent power to dismiss an action for general delay” (2026 NY Slip Op 01396 at [3])

“On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing” (2026 NY Slip Op 01396 at [3])

FACTUAL BACKGROUND

HSBC commenced a mortgage-foreclosure action in February 2008 concerning property in South Nyack. All defendants defaulted, and HSBC obtained an order of reference within months and a judgment of foreclosure and sale in August 2008. The mortgage was assigned to U.S. Bank Trust in 2019, and after the action was restored to active status in 2020, the plaintiff did not move for a new order of reference until September 2023. The motion was unopposed, but the Supreme Court dismissed the complaint based on the delay.

PROCEDURAL HISTORY

HSBC Mortgage Corporation commenced the foreclosure action in February 2008, and all defendants defaulted. The Supreme Court granted HSBC's motion for a default judgment and order of reference in May 2008 and entered a judgment of foreclosure and sale in August 2008. After the mortgage was assigned to U.S. Bank Trust, the Supreme Court restored the action to active status in 2020 and directed the plaintiff to move for an order of reference within 30 days. The plaintiff moved in September 2023, but the Supreme Court denied the motion and sua sponte dismissed the complaint. The Appellate Division deemed the appeal from the dismissal portion an application for leave to appeal, granted leave, and reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order was reversed insofar as appealed from, and the branches of the plaintiff's motion seeking leave to enter a default judgment and an order of reference were granted.

CASES CITED

- Deutsche Bank Natl. Trust Co. v Singh, 236 AD3d 859, 860
- Deutsche Bank Natl. Trust Co. v Khalil, 208 AD3d 555, 557
- Wells Fargo Bank, N.A. v Lopez, 214 AD3d 844, 845
- U.S. Bank, N.A. v Stiene, 203 AD3d 985, 987
- Citimortgage, Inc. v Zaibak, 188 AD3d 982, 983
- Deutsche Bank Natl. Trust Co. v Lamarre, 211 AD3d 811, 813
- James B. Nutter & Co. v Heirs & Distributees of Estate of Middleton, 228 AD3d 918, 919
- Onewest Bank, FSB v Tarantola, 156 AD3d 711

- Onewest Bank, FSB v Fernandez, 112 AD3d 681, 682
- Onewest Bank, FSB v Perwaiz, 204 AD3d 935, 936-937
- U.S. Bank N.A. v Bhagwandeem, 216 AD3d 700, 702
- Chase v Scavuzzo, 87 NY2d 228, 232
- Bank of N.Y. v Harper, 176 AD3d 907, 908-909
- Bank of Am., N.A. v Banu, 231 AD3d 781, 782-783
- Delgado v New York City Hous. Auth., 21 AD3d 522, 522
- U.S. Bank N.A. v Ricketts, 153 AD3d 1298, 1299
- TCIF REO GCM, LLC v Walker, 139 AD3d 704, 706
- Citimortgage, Inc. v Barton, 212 AD3d 706, 707
- Nationstar Mtge., LLC v Esdelle, 186 AD3d 1384, 1387
- Wells Fargo Bank, N.A. v Lilley, 154 AD3d 795, 796-797

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