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

Wells Fargo Bank, N.A. v. Wercberger

2025 NY Slip Op 07040 (N.Y. Ct. App. 2025) · No. 2022-00736, 2022-00737, 2022-00738, 2022-00739 · Decided December 17, 2025

SUMMARY

The New York Appellate Division, Second Department held that the plaintiff failed to timely seek a default judgment against defendant David Kaplan and did not establish sufficient cause to excuse the delay under CPLR 3215(c). The court therefore dismissed the foreclosure complaint against Kaplan as abandoned, denied the plaintiff's requests for a default judgment and order of reference, and dismissed certain appeals as academic.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Valerie Brathwaite Nelson, J.; Janice A. Taylor, J.; Lourdes M. Ventura, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 17, 2025
DOCKET	2022-00736, 2022-00737, 2022-00738, 2022-00739
DISPOSITION	reversed
PROCEDURAL POSTURE	David Kaplan appealed from four orders in a mortgage-foreclosure action: an order denying his CPLR 3215(c) cross-motion to dismiss the complaint as abandoned, an order denying his motion under CPLR 3211(a)(5) and 3217(c), and two orders granting Wells Fargo leave to enter a default judgment and an order of reference.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's rulings for error of law and considered whether the Supreme Court improvidently exercised its discretion in evaluating the excuse for the delay under CPLR 3215(c).
PRECEDENTIAL VALUE	Published New York appellate decision

PARTIES	David Kaplan v. Wells Fargo Bank, National Association

TOPICS

default judgment | foreclosure | appellate procedure | civil procedure | motions to dismiss

PRACTICE AREAS

civil procedure | foreclosure | appellate procedure | remedies

QUESTIONS PRESENTED

1. Whether Kaplan was entitled under CPLR 3215(c) to dismissal of the complaint against him as abandoned because Wells Fargo failed to take proceedings for entry of a default judgment within one year after his default.
2. Whether Wells Fargo demonstrated sufficient cause to excuse its failure to timely seek a default judgment by showing both a reasonable excuse for the delay and a potentially meritorious cause of action.
3. Whether Kaplan's other challenges to the action and personal jurisdiction remained justiciable after dismissal under CPLR 3215(c).

HOLDINGS

1. When a plaintiff fails to take proceedings for entry of a default judgment within one year after the defendant's default, CPLR 3215(c) requires dismissal of the claims as abandoned unless sufficient cause is shown.
2. To establish sufficient cause under CPLR 3215(c), a plaintiff must show both a reasonable excuse for the delay in seeking a default judgment and a potentially meritorious cause of action.
3. After dismissal of the complaint against Kaplan as abandoned, the appeals concerning his other dismissal motion and the personal-jurisdiction portion of the first February 18, 2020 order were academic.

KEY QUOTATIONS

> *“"If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned."”* ([*1])

> *“"This Court has interpreted this language as requiring both a reasonable excuse for the delay in timely moving for a default judgment, plus a demonstration that the cause of action is potentially meritorious"”* ([*1])

FACTUAL BACKGROUND

Wells Fargo commenced a mortgage-foreclosure action against David Kaplan and others in July 2012. Kaplan was served on October 12, 2012, or, according to Wells Fargo, by October 31, 2012. Wells Fargo did not move for leave to enter a default judgment and for an order of reference until May 7, 2014, approximately five months after the one-year period had expired. Wells Fargo's explanation for the delay was conclusory and unsupported by admissible evidence from a person with personal knowledge.

PROCEDURAL HISTORY

Wells Fargo commenced the foreclosure action in July 2012. After Kaplan was served, Wells Fargo did not move for leave to enter a default judgment until May 2014, more than one year after the default period expired. The Supreme Court, Kings County, denied Kaplan's motion to dismiss the claims against him as abandoned and later granted Wells Fargo's motion for a default judgment and order of reference. The Appellate Division reversed the order denying dismissal under CPLR 3215(c), dismissed certain other appeals as academic, and denied Wells Fargo's requests for a default judgment and order of reference.

DISPOSITION

reversed

CASES CITED

- CIT Group/Consumer Fin., Inc. v. Kaiser, 206 AD3d 791, 793
- Wells Fargo Bank v. Islam, 174 AD3d 670, 671-672
- Ocwen Loan Servicing, LLC v. Buonauro, 233 AD3d 972, 974-975
- U.S. Bank N.A. v. Benitez, 211 AD3d 765, 766-767
- U.S. Bank N.A. v. 63 Holiday Dr. Realty Corp., 230 AD3d 713, 714
- U.S. Bank N.A. v. Dickerson, 223 AD3d 930, 932
- Butindaro v. Grinberg, 57 AD3d 932, 932
- Deutsche Bank Natl. Trust Co. v. Charles, 186 AD3d 454, 456
- HSBC Bank USA, N.A. v. Cross, 205 AD3d 779, 782-783
- US Bank, N.A. v. Onuoha, 162 AD3d 1094, 1096