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

Friedman v. MTGLQ Invs., LP

Friedman, 2026 NY Slip Op 01341 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2026) · No. 2024-02896 · Decided March 11, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order granting the plaintiffs' motion for leave to enter a default judgment in an RPAPL article 15 action to cancel and discharge a mortgage. The court held that U.S. Bank, as alleged successor to the defaulting defendant, failed to demonstrate a reasonable excuse for the delay in answering or establish grounds to compel acceptance of its late answer.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Linda Christopher, J.; Lillian Wan, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	March 11, 2026
DOCKET	2024-02896
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nonparty U.S. Bank National Association appealed from an order granting the plaintiffs' motion for leave to enter a default judgment against MTGLQ Investors, LP and denying U.S. Bank's cross-motion to compel acceptance of its late answer.
STANDARD OF REVIEW	A facially sufficient motion for leave to enter a default judgment is defeated only if the defendant shows that there was no default or establishes a reasonable excuse for the delay and a potentially meritorious defense. A court may compel acceptance of an untimely pleading upon a showing of a reasonable excuse for the delay or default.
PRECEDENTIAL VALUE	Published

PARTIES	U.S. Bank National Association, nonparty-appellant v. David Friedman, Leah Friedman

TOPICS

default judgment · default · mortgages · title disputes · appellate procedure

PRACTICE AREAS

Civil procedure · Real estate litigation · Mortgage foreclosure and discharge · Default judgments · Appellate procedure

QUESTIONS PRESENTED

1. Whether the Friedmans established the requirements for entry of a default judgment under CPLR 3215.
2. Whether U.S. Bank demonstrated a reasonable excuse for the delay sufficient to defeat the default-judgment motion.
3. Whether U.S. Bank was entitled to compel the Friedmans to accept its late answer under CPLR 3012(d).

HOLDINGS

1. The plaintiffs were entitled to leave to enter a default judgment because they submitted proof of service, proof of the facts constituting their cause of action, and proof of MTGLQ's default.
2. U.S. Bank failed to demonstrate a reasonable excuse for the delay in answering the complaint.
3. The Supreme Court properly denied U.S. Bank's request to compel the Friedmans to accept its late answer because U.S. Bank failed to establish a reasonable excuse for the delay.

KEY QUOTATIONS

> *"On a motion for leave to enter a default judgment against a defendant based on the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defendant's default"* ([*1])

> *"To defeat a facially sufficient CPLR 3215 motion, a defendant must show either that there was no default or that there was a reasonable excuse for the delay and a potentially meritorious defense"* ([*1])

> *"Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default"* ([*1])

FACTUAL BACKGROUND

The Friedmans executed a note secured by a mortgage on Brooklyn real property in 2004. CitiMortgage accelerated the mortgage debt in a 2009 foreclosure action, which was voluntarily discontinued in 2015; a second foreclosure action commenced in 2016 was voluntarily discontinued in 2022. After the mortgage was assigned to MTGLQ, the Friedmans brought an RPAPL article 15 action to cancel and discharge it, but MTGLQ failed to appear or answer. MTGLQ later assigned the mortgage to U.S. Bank, which sought to compel acceptance of its late answer.

PROCEDURAL HISTORY

The Friedmans commenced an RPAPL article 15 action to cancel and discharge a mortgage after two prior foreclosure actions were voluntarily discontinued and the mortgage was assigned to MTGLQ. MTGLQ failed to appear or answer. After MTGLQ assigned the mortgage to U.S. Bank, the Friedmans moved for a default judgment, and U.S. Bank opposed and sought acceptance of its late answer. The Supreme Court, Kings County, granted the default-judgment motion and denied the relevant branch of U.S. Bank's cross-motion; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- NYC REH, Inc. v Mizrahi, 204 AD3d 1023, 1024-1025
- DLJ Mtge. Capital, Inc. v Brewster, 237 AD3d 902, 903-904
- U.S. Bank N.A. v Mallouk, 229 AD3d 832, 834
- JBBNY, LLC v Dedvukaj, 237 AD3d 1176, 1177