

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Deutsche Bank National Trust Co. v. Medina

2026 NY Slip Op 00011 · No. Index No. 850005/14; Appeal No. 5507; Case No. 2025-00987 · Decided January 6, 2026

SUMMARY

The Appellate Division, First Department, affirmed the dismissal of a foreclosure complaint as abandoned under CPLR 3215(c). The court held that the defendant's failure to vacate his default did not waive his right to seek dismissal, and that participation in settlement conferences did not constitute a formal or informal appearance on the merits.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Manzanet-Daniels, J.; Gesmer, J.; Higgitt, J.; Michael, J.
JURISDICTION	Appellate Division, First Department, New York
DECIDED	January 6, 2026
DOCKET	Index No. 850005/14; Appeal No. 5507; Case No. 2025-00987
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order denying its motion to confirm a referee's report and enter a judgment of foreclosure and sale, and granting defendant Medina's cross-motion to dismiss the foreclosure complaint as abandoned under CPLR 3215(c).
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Deutsche Bank National Trust Company v. Roberto Sebelen Medina

TOPICS

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

PRACTICE AREAS

- foreclosure
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether a defendant's failure to move to vacate a default waives the defendant's right to seek dismissal of a foreclosure complaint as abandoned under CPLR 3215(c).
2. Whether participation in settlement conferences constitutes a formal or informal appearance that prevents dismissal under CPLR 3215(c).
3. Whether dismissal under CPLR 3215(c) requires prejudice to the defendant or is avoided when the plaintiff fails to establish sufficient cause for the delay.

HOLDINGS

1. A defendant's failure to move to vacate a default in answering or appearing does not waive the defendant's right to seek dismissal of the complaint as abandoned under CPLR 3215(c).
2. Participation in settlement conferences did not constitute a formal or informal appearance because Medina did not actively litigate the action or participate on the merits.
3. Dismissal under CPLR 3215(c) was warranted even without prejudice to Medina because plaintiff failed to seek entry of a default judgment within one year and failed to establish sufficient cause for the delay.

KEY QUOTATIONS

“did not actively litigate the action before . . . Supreme Court or participate in the action on the merits”
([*1])

FACTUAL BACKGROUND

Medina defaulted in answering the foreclosure complaint and did not move to vacate his default. Plaintiff did not move for entry of a default judgment until April 13, 2023, more than one year after Medina's default. Medina participated in settlement conferences but did not actively litigate the action or participate on the merits.

PROCEDURAL HISTORY

The Supreme Court, New York County, denied plaintiff's motion and granted Medina's cross-motion, concluding that the complaint had been abandoned because plaintiff did not seek entry of a default judgment within one year after Medina's default. The Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- MTGLQ Invs., L.P. v. Shay, 190 AD3d 527, 529 (1st Dept 2021), lv denied 37 NY3d 908 (2021)
- Sports Legends, Inc. v. Carberry, 38 AD3d 470, 470 (1st Dept 2007)
- Wells Fargo Bank, N.A. v. Gwebu, 226 AD3d 578 (1st Dept 2024)
- Wells Fargo Bank, N.A. v. Martinez, 181 AD3d 470, 471 (1st Dept 2020)

- U.S. Bank N.A. v. Dickerson, 223 AD3d 930, 932 (2d Dept 2024)

OPINION

PER CURIAM.

Deutsche Bank Natl. Trust Co. v Medina (2026 NY Slip Op 00011) Deutsche Bank Natl. Trust Co. v Medina 2026 NY Slip Op 00011 Decided on January 06, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: January 06, 2026 Before: Renwick, P.J., Manzanet-Daniels, Gesmer, Higgitt, Michael, JJ. Index No. 850005/14|Appeal No. 5507|Case No. 2025-00987| [*1]Deutsche Bank National Trust Company, etc., Appellant, v Roberto Sebelen Medina, Respondent, Betsie Marie Corujo Martinez et al., Defendants. Knuckles & Manfro, LLP, Tarrytown (Max T. Saglimbeni of counsel), for appellant.

Binakis Law, P.C., Astoria (Patrick Binakis of counsel), for respondent. Order, Supreme Court, New York County (Francis A. Kahn, III, J.), entered January 22, 2025, which denied plaintiff's motion to confirm a referee's report and for a judgment of foreclosure and sale, and granted defendant Roberto Sebelen Medina's cross-motion to dismiss the complaint as abandoned under CPLR 3215(c), unanimously affirmed, without costs.

Contrary to plaintiff's argument, defendant Medina's failure to move to vacate his default in answering the foreclosure complaint or appearing in this action did not operate as a waiver of his right to seek dismissal of the complaint pursuant to CPLR 3215(c) (see MTGLQ Invs., L.P. v Shay, 190 AD3d 527, 529 [1st Dept 2021], lv denied 37 NY3d 908 [2021]; Sports Legends, Inc. v Carberry, 38 AD3d 470, 470 [1st Dept 2007]).

The court properly dismissed the complaint as abandoned (CPLR 3215[c]). Plaintiff failed to move for entry of a default judgment until April 13, 2023, more than one year after Medina's default (see Wells Fargo Bank, N.A. v Gwebu, 226 AD3d 578 [1st Dept 2024]). Medina's participation in settlement conferences did not constitute a formal or an informal appearance because he "did not actively litigate the action before...

Supreme Court or participate in the action on the merits" (Wells Fargo Bank, N.A. v Martinez, 181 AD3d 470, 471 [1st Dept 2020] [internal quotation marks omitted]). Plaintiff failed to establish sufficient cause for why the complaint should not be dismissed, and dismissal was warranted even in the absence of prejudice to Medina (see U.S. Bank N.A. v Dickerson, 223 AD3d 930, 932 [2d Dept 2024]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 6, 2026

PER CURIAM.

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