

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

Nationstar Mtge., LLC v. Rampersad

2026 NY Slip Op 01070 · No. 2024-06672 · Decided February 25, 2026

SUMMARY

The Appellate Division, Second Department, modified an order in a mortgage foreclosure action that permitted the plaintiff to discontinue both the action and the defendant's counterclaims. The court held that discontinuance of the action was proper, but the counterclaims should instead be severed and continued.

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.; Lara J. Genovesi, J.; Janice A. Taylor, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 25, 2026
DOCKET	2024-06672
DISPOSITION	other
PROCEDURAL POSTURE	Windward Bora, LLC appealed from an order granting Nationstar's motion to discontinue the mortgage-foreclosure action and Windward's counterclaims.
STANDARD OF REVIEW	Abuse of discretion, subject to review under the governing legal principles applicable to a motion for voluntary discontinuance under CPLR 3217(b).
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Windward Bora, LLC v. Nationstar Mortgage, LLC

TOPICS

- foreclosure
- civil procedure
- appellate procedure
- affirmative defenses

PRACTICE AREAS

civil procedure

mortgage foreclosure

appellate procedure

real estate

QUESTIONS PRESENTED

1. Whether the Supreme Court properly granted Nationstar leave under CPLR 3217(b) to voluntarily discontinue the mortgage-foreclosure action.
2. Whether the Supreme Court properly allowed Nationstar to discontinue Windward Bora, LLC's counterclaims, or instead was required to sever and continue those counterclaims.

HOLDINGS

1. The Supreme Court properly granted Nationstar's motion to discontinue the foreclosure action because the record did not establish circumstances requiring denial of discontinuance under CPLR 3217(b).
2. The Supreme Court should not have permitted Nationstar to discontinue Windward's counterclaims; the counterclaims had to be severed from the discontinued action and continued.

KEY QUOTATIONS

"The determination of a motion for leave to voluntarily discontinue an action pursuant to CPLR 3217(b) rests within the sound discretion of the court" ([*1])

"Generally, such motions should be granted, "unless the discontinuance would prejudice a substantial right of another party, circumvent an order of the court, avoid the consequences of a potentially adverse determination, or produce other improper results"" ([*1]-[*2])

"Factors militating against discontinuance include prejudice to an opposing party as well as the imposition of one or more counterclaims" ([*2])

FACTUAL BACKGROUND

Nationstar commenced an action to foreclose a mortgage against, among others, Windward Bora, LLC. Windward served an answer asserting affirmative defenses and counterclaims. Nationstar later sought to discontinue both the foreclosure action and Windward's counterclaims. The appellate court concluded that the action could be discontinued but that Windward's counterclaims should remain pending.

PROCEDURAL HISTORY

Nationstar commenced a mortgage-foreclosure action in October 2019. Windward answered in July 2020, asserting affirmative defenses and counterclaims. Nationstar moved in December 2023 to discontinue both the action and the counterclaims, and the Supreme Court, Queens County, granted the motion. The Appellate Division affirmed the discontinuance of the foreclosure action but modified the order to deny discontinuance of Windward's counterclaims and to sever and continue them.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified to deny discontinuance of Windward Bora, LLC's counterclaims and to sever and continue those counterclaims; the order was otherwise affirmed.

CASES CITED

- Wells Fargo Bank, N.A. v. Chaplin, 107 AD3d 881, 883
- Tucker v. Tucker, 55 NY2d 378, 383
- Aurora Loan Servs., LLC v. Hunte, 189 AD3d 1525, 1526
- Haughey v. Kindschuh, 176 AD3d 785, 786
- Marinelli v. Wimmer, 139 AD3d 914, 915
- Jamaica Hosp. Med. Ctr., Inc. v. Oxford Health Plans [NY], Inc., 58 AD3d 686
- Aison v. Hudson Riv. Black Riv. Regulating Dist., 279 AD2d 754, 755
- Matter of Bronsky-Graff Orthodontics, P.C., 270 AD2d 792, 793
- Banschick v. Johnson, 222 AD3d 608, 611

OPINION

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PER CURIAM.

Nationstar Mtge., LLC v Rampersad (2026 NY Slip Op 01070) Nationstar Mtge., LLC v Rampersad 2026 NY Slip Op 01070 Decided on February 25, 2026 Appellate Division, Second 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 on February 25, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P.

LARA J. GENOVESI

JANICE A. TAYLOR

JAMES P. MCCORMACK, JJ. 2024-06672

(Index No. 717324/19) [*1]Nationstar Mortgage, LLC, etc., respondent, v Rick Rampersad, et al., defendants, Windward Bora, LLC, appellant. Anthony J. LoPresti, Garden City, NY (Gail M. Blaisie of counsel), for appellant. McCalla Raymer Leibert Pierce, LLP, New York, NY (Daniel S. LoPresti of counsel), for respondent. DECISION & ORDER In an action to foreclose a mortgage, the defendant Windward Bora, LLC, appeals from an order of the Supreme Court, Queens County (Tracy A. Catapano-Fox, J.), entered March 22, 2024. The order granted those branches of the plaintiff's motion which were, in effect, pursuant to CPLR 3217(b) to discontinue

the action and the counterclaims asserted by the defendant Windward Bora, LLC. ORDERED that the order is modified, on the law, by deleting the provision thereof granting that branch of the plaintiff's motion which was, in effect, pursuant to CPLR 3217(b) to discontinue the counterclaims asserted by the defendant Windward Bora, LLC, and substituting therefor a provision denying that branch of the motion and severing and continuing those counterclaims; as so modified, the order is affirmed, without costs or disbursements. In October 2019, the plaintiff commenced this action to foreclose a mortgage against, among others, the defendant Windward Bora, LLC (hereinafter Windward). In July 2020, Windward served an answer asserting various affirmative defenses and counterclaims. In December 2023, the plaintiff moved, inter alia, in effect, pursuant to CPLR 3217(b) to discontinue the action and the counterclaims asserted by Windward. Windward opposed the motion, arguing, among other things, that its counterclaims could not be subject to discontinuance. In an order entered March 22, 2024, the Supreme Court granted those branches of the plaintiff's motion. Windward appeals. "The determination of a motion for leave to voluntarily discontinue an action pursuant to CPLR 3217(b) rests within the sound discretion of the court" (Wells Fargo Bank, N.A. v Chaplin , 107 AD3d 881, 883 ; see Tucker v Tucker , 55 NY2d 378, 383 ; Aurora Loan Servs., LLC v Hunte , 189 AD3d 1525, 1526). Generally, such motions should be granted, "'unless the discontinuance would prejudice a substantial right of another party, circumvent an order of the court, avoid the consequences of a potentially adverse determination, or produce other improper results'" (Haughey v Kindschuh , 176 AD3d 785 , 786, quoting Marinelli v Wimmer , 139 AD3d 914, 915 ; see Jamaica Hosp. Med. Ctr., Inc. v Oxford Health Plans [NY], Inc. , 58 AD3d 686). "Factors militating against discontinuance include prejudice to an opposing party as well as the imposition of one or more counterclaims" (Haughey v Kindschuh , 176 AD3d at 786 [internal quotation marks omitted]; see [*2]Aison v Hudson Riv. Black Riv. Regulating Dist. , 279 AD2d 754, 755 ; Matter of Bronsky-Graff Orthodontics, P.C. , 270 AD2d 792, 793). Applying these principles here, the Supreme Court properly granted that branch of the plaintiff's motion which was, in effect, pursuant to CPLR 3217(b) to discontinue the action. However, under the circumstances of this case, the court should have also directed that Windward's counterclaims be severed and continued (see generally Banschick v Johnson , 222 AD3d 608, 611). Windward's remaining contention is without merit. CONNOLLY, J.P., GENOVESI, TAYLOR and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court