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

Bank of N.Y. Mellon v. Hamawi

Bank of N.Y. Mellon, 2026 NY Slip Op 03659 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2025-08843, 2025-09492 · Decided June 10, 2026

SUMMARY

The Appellate Division, Second Department, affirmed orders granting the plaintiff leave to enter a default judgment and an order of reference in a mortgage foreclosure action. The court held that the plaintiff took proceedings toward entry of judgment within one year of the defendant's default, avoiding dismissal under CPLR 3215(c). It also upheld the denial of the defendant's request to toll interest during a period when the action was automatically stayed under CPLR 321(c).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Helen Voutsinas, J.; Janice A. Taylor, J.; James P. McCormack, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	June 10, 2026
DOCKET	2025-08843, 2025-09492
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Muna Hamawi appealed from two orders granting the plaintiff leave to enter a default judgment and an order of reference in a mortgage-foreclosure action, and denying her cross-motion to toll interest.
STANDARD OF REVIEW	The court reviewed whether the plaintiff satisfied CPLR 3215(c)'s requirement that proceedings for entry of judgment be taken within one year after default, and whether the Supreme Court improvidently exercised its discretion concerning accrual of interest in an equitable mortgage-foreclosure action.
PRECEDENTIAL VALUE	precedential
PARTIES	Muna Hamawi v. Bank of New York Mellon

TOPICS

foreclosure · default judgment · appellate procedure · prejudgment interest · civil procedure

PRACTICE AREAS

real estate law · mortgage foreclosure · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the foreclosure complaint had to be dismissed as abandoned under CPLR 3215(c) because the plaintiff did not obtain a default judgment within one year after Hamawi's default.
2. Whether the Supreme Court properly exercised its discretion in denying Hamawi's request to toll interest from May 4, 2011, to February 22, 2017.
3. Whether the appeal from the July 8, 2025 order concerning leave to enter a default judgment and an order of reference had to be dismissed because that portion of the order was superseded by the July 29, 2025 order.

HOLDINGS

1. A plaintiff need not obtain a default judgment within one year after the defendant's default to avoid dismissal under CPLR 3215(c); it is sufficient that the plaintiff took proceedings within that period that manifested an intent to pursue entry of judgment. The plaintiff's September 30, 2009 motion for an order of reference satisfied that requirement, so dismissal as abandoned was unwarranted.
2. The Supreme Court did not improvidently exercise its discretion in denying Hamawi's request to toll accrual of interest from May 4, 2011, to February 22, 2017.

KEY QUOTATIONS

> *"It is not necessary for a plaintiff to actually obtain a default judgment within one year of the default in order to avoid dismissal pursuant to CPLR 3215(c)"* ([*2])

> *"Rather, as long as proceedings are being taken, and those proceedings manifest an intent not to abandon the action but to seek entry of judgment, the complaint should not be subject to dismissal"* ([*2])

> *"In an action of an equitable nature, such as an action to foreclose a mortgage, the recovery of interest is within the court's discretion and the exercise of that discretion will be governed by the particular facts in each case"* ([*2])

FACTUAL BACKGROUND

The plaintiff commenced a mortgage-foreclosure action in 2009 concerning real property in Valley Stream. Muna Hamawi failed to answer or appear, and the plaintiff moved for an order of reference on September 30, 2009. The action was later subject to an automatic stay under CPLR 321(c) following the death of Hamawi's attorney, and Hamawi sought to toll interest during part of that stay period.

PROCEDURAL HISTORY

The plaintiff commenced the foreclosure action in 2009, and Hamawi failed to answer or appear. The plaintiff moved for an order of reference within one year of the default, but the motion was denied without prejudice in 2011; an order of reference and judgment of foreclosure and sale were later entered. In 2024, the Supreme Court granted Hamawi's motion to vacate those prior orders based on an automatic stay under CPLR 321(c). The plaintiff then renewed its request for leave to enter a default judgment and an order of reference, which the Supreme Court granted in July 2025. The Appellate Division dismissed the appeal from the superseded portion of the July 8 order and affirmed the orders insofar as reviewed.

DISPOSITION

affirmed

CASES CITED

- U.S. Bank N.A. v. Jerriho-Cadogan, 224 A.D.3d 788, 789
- Deutsche Bank Natl. Trust Co. v. Khalil, 208 A.D.3d 555, 557-558
- Onewest Bank, FSB v. Kaur, 172 A.D.3d 1392, 1393-1394
- BAC Home Loans Servicing, L.P. v. Jackson, 159 A.D.3d 861, 862

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Bank of New York Mellon, etc., respondent, v Antoun A. Hamawi, et al., defendants, Muna Hamawi, appellant. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 10, 2026 2025-08843, 2025-09492, (Index No. 15252/09) Angela G. Iannacci, J.P.

Helen Voutsinas Janice A. Taylor James P. McCormack, JJ. Fadullon Dizon Krul, LLP, Jericho, NY (Juan Paolo F. Dizon and Alexander Krul of counsel), for appellant. Pincus & Tarab, Attorneys at Law, PLLC, Uniondale, NY (Robert Markel of counsel), for respondent. [*1] DECISION & ORDER In an action to foreclose a mortgage, the defendant Muna Hamawi appeals from (1) an order of the Supreme Court, Nassau County (Catherine Rizzo, J.), entered July 8, 2025, and (2) an order of the same court entered July 29, 2025.

The order entered July 8, 2025, insofar as appealed from, granted those branches of the plaintiff's motion which were for leave to enter a default judgment against the defendant Muna Hamawi and for an order of reference and denied the cross-motion of the defendant Muna Hamawi to toll the accrual of interest on the subject mortgage loan from May 4, 2011, to February 22, 2017.

The order entered July 29, 2025, insofar as appealed from, granted those branches of the plaintiff's motion which were for leave to enter a default judgment against the defendant Muna Hamawi and for an order of reference and referred the matter to a referee to compute the amount due to the plaintiff. ORDERED that the appeal from so much of the order entered July 8, 2025, as granted those branches of the plaintiff's motion which were for leave to enter a default judgment against the defendant Muna Hamawi and for an order of reference is dismissed, as that portion of that order was superseded by the order entered July 29, 2025; and it is further, ORDERED that the order entered July 8, 20205, is affirmed insofar as reviewed; and it is further, ORDERED that the order entered July 29, 2025, is affirmed insofar as appealed from; and it is further, ORDERED that one bill of costs is awarded to the plaintiff.

In 2009, the plaintiff commenced this action against the defendant Muna Hamawi (hereinafter the defendant), among others, to foreclose a mortgage on certain real property located in Valley Stream. The defendant failed to answer the complaint or appear in the action.

In September 2009, the plaintiff filed a request for judicial intervention as well as a motion for an order [*2] of reference. In an order entered May 4, 2011, the Supreme Court denied the plaintiff's motion without prejudice.

The plaintiff obtained an order of reference on July 6, 2017, and a judgment of foreclosure and sale on October 2, 2018. Thereafter, the defendant moved, among other things, to vacate the order of reference and the judgment of foreclosure and sale on the ground that pursuant to CPLR 321(c) an automatic stay had been in effect since November 2010 due to the death of the defendant's attorney.

In an order entered December 24, 2024, the Supreme Court, inter alia, granted those branches of the defendant's motion. The plaintiff again moved, among other things, for leave to enter a default judgment against the defendant and for an order of reference.

The defendant opposed the motion, arguing, inter alia, that the Supreme Court could not grant leave to enter a default judgment against her and was required to dismiss the complaint pursuant to CPLR 3215(c), because the plaintiff had abandoned the action, and cross-moved to toll the accrual of interest from May 4, 2011, to February 22, 2017.

In an order entered July 8, 2025, the court, among other things, granted those branches of the plaintiff's motion and denied the defendant's cross-motion. In an order entered July 29, 2025, the court, inter alia, granted the same relief to the plaintiff and referred the matter to a referee to compute the amount due to the plaintiff.

The defendant appeals from the order entered July 8, 2025, and the order entered July 29, 2025. Pursuant to CPLR 3215(c), "[i]f 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... unless sufficient cause is shown why the complaint should not be dismissed."

It is not necessary for a plaintiff to actually obtain a default judgment within one year of the default in order to avoid dismissal pursuant to CPLR 3215(c) (see U.S. Bank N.A. v Jerriho-Cadogan, 224 AD3d 788, 789; Deutsche Bank Natl. Trust Co. v Khalil, 208 AD3d 555, 557). Rather, as long as proceedings are being taken, and those proceedings manifest an intent not to abandon the action but to seek entry of judgment, the complaint should not be subject to dismissal (see U.S. Bank N.A. v Jerriho-Cadogan, 224 AD3d at 789; Deutsche Bank Natl.

Trust Co. v Khalil, 208 AD3d at 557). Here, contrary to the defendant's contention, the plaintiff took proceedings for the entry of judgment within one year of the defendant's default by moving for an order of reference on September 30, 2009 (see Deutsche Bank Natl. Trust Co. v Khalil, 208 AD3d at 557). "[T]he plaintiff was not required to account for any additional periods of delay that may have occurred subsequent to the initial one-year period contemplated by CPLR 3215(c)" (id. at 558).

Accordingly, the Supreme Court properly granted those branches of the plaintiff's motion which were for leave to enter a default judgment against the defendant and for an order of reference. In an action of an equitable nature, such as an action to foreclose a mortgage, the recovery of interest is within the court's discretion and the exercise of that discretion will be governed by the particular facts in each case (see Onewest Bank, FSB v Kaur, 172 AD3d 1392, 1393-1394; BAC Home Loans Servicing, L.P. v Jackson, 159 AD3d 861, 862).

Under the circumstances of this case, the Supreme Court did not improvidently exercise its discretion in denying the defendant's cross-motion to toll the accrual of interest from May 4, 2011, to February 22, 2017, since during that period the action was automatically stayed pursuant to CPLR 321(c) due to the death of the defendant's attorney. IANNACCI, J.P., VOUTSINAS, TAYLOR and MCCORMACK, JJ., concur.

ENTER: Darrell M. Joseph Clerk of the Court