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