Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____ Argued - January 8, 2026

COLLEEN D. DUFFY, J.P.
PAUL WOOTEN
CARL J. LANDICINO
SUSAN QUIRK, JJ.

2024-00407 DECISION & ORDER

US Bank National Association, etc., appellant,
v Taliby Diane, respondent, et al., defendants.

(Index No. 713684/21)

McCalla Raymer Leibert Pierce, LLC, New York, NY (Harold L. Kofman of counsel), for appellant.

Berg & David PLLC, Inwood, NY (Abraham David and Sholom Wohlgelernter of counsel), for respondent.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Queens County (Carmen R. Velasquez, J.), entered October 4, 2023. The order granted that branch of the motion of the defendant Taliby Diane which was pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned.

ORDERED that the order is affirmed, with costs.

In December 2009, the plaintiff commenced this action against the defendant Taliby Diane (hereinafter the defendant), among others, to foreclose a mortgage on certain real property located in Queens. The defendant failed to appear or answer the complaint. A foreclosure settlement conference was held on January 14, 2011, at which the defendant did not appear.

In June 2023, the defendant moved, inter alia, pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned. The plaintiff opposed the motion. In an order entered October 4, 2023, the Supreme Court granted that branch of the defendant's motion. The plaintiff appeals.

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." "This statute is strictly construed, as [t]he language of CPLR 3215(c) is not, in the first

instance, discretionary, but mandatory, inasmuch as courts 'shall' dismiss claims (CPLR 3215[c]) for which default judgments are not sought within the requisite one-year period, as those claims are then deemed abandoned" (*U.S. Bank N.A. v Benitez*, 211 AD3d 765, 766 [internal quotation marks omitted]). The statute further provides, however, that the failure to timely seek a default may be excused if "sufficient cause is shown why the complaint should not be dismissed" (CPLR 3215[c]; *see Wells Fargo Bank, N.A. v Wercberger*, 244 AD3d 1029, 1031). "This Court has interpreted this language as requiring both a reasonable excuse for the delay in timely moving for a default judgment, plus a demonstration that the cause of action is potentially meritorious" (*Ocwen Loan Servicing, LLC v Buonauro*, 233 AD3d 972, 974 [internal quotation marks omitted]; *see US Bank N.A. v Perez*, 203 AD3d 988, 989). "The determination of whether an excuse is reasonable in any given instance is committed to the sound discretion of the motion court" (*US Bank N.A. v Perez*, 203 AD3d at 989 [internal quotation marks omitted]).

Here, assuming that the action was subject to mandatory settlement conferences pursuant to CPLR 3408(a), thereby tolling the one-year period within which the plaintiff had to take proceedings for the entry of a default judgment against the defendant, the one-year period expired, at the latest, in January 2012 (*see Ocwen Loan Servicing, LLC v Buonauro*, 233 AD3d at 974). As the Supreme Court determined, the plaintiff failed to demonstrate a reasonable excuse for its failure to take proceedings for the entry of a default judgment within one year after the action was released from the foreclosure settlement conference part in January 2011. Contrary to the plaintiff's contention, its vague, conclusory, and unsubstantiated assertions that its delay was attributable to compliance with an administrative order and a change in counsel were insufficient to excuse the delay (*see id.* at 975; *US Bank N.A. v Perez*, 203 AD3d at 990). Since the plaintiff failed to establish a reasonable excuse for its delay, this Court need not consider whether the plaintiff had a potentially meritorious cause of action (*see Ocwen Loan Servicing, LLC v Buonauro*, 233 AD3d at 975).

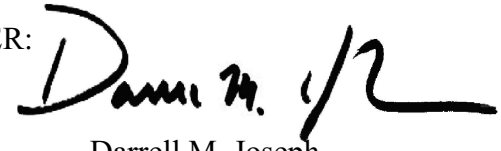
The plaintiff's contention on appeal that it took proceedings for the entry of judgment within the meaning of CPLR 3215(c) by filing a request for judicial intervention is not properly before this Court, as it is improperly raised for the first time on appeal. Under the circumstances of this case, the contention does not present "a pure question of law appearing on the face of the record which could not have been avoided by factual showings or legal countersteps if raised at the proper juncture" (*Wells Fargo Bank v Islam*, 174 AD3d 670, 672; *see Wells Fargo Bank, N.A. v Wercberger*, 244 AD3d at 1030).

Accordingly, the Supreme Court properly granted that branch of the defendant's motion which was pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against him as abandoned.

The parties' remaining contentions need not be addressed in light of our determination.

DUFFY, J.P., WOOTEN, LANDICINO and QUIRK, JJ., concur.

ENTER:



Darrell M. Joseph
Clerk of the Court