

**Bank of N.Y. Mellon v Arbo**

2014 NY Slip Op 33853(U)

October 8, 2014

Supreme Court, Westchester County

Docket Number: 60374/12

Judge: Robert M. DiBella

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
WESTCHESTER COUNTY**

-----X  
**THE BANK OF NEW YORK MELLON f/k/a THE  
BANK OF NEW YORK, as TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS INC.,  
ASSET BACKED CERTIFICATES, SERIES  
2006-3,**

**Plaintiff,**

**-against-**

**DECISION AND ORDER  
Motion Seq. No. 001**

**JOSE ARBO, US BANK NATIONAL ASSOCIATION  
AS TRUSTEE FOR THE C-BASS MORTGAGE LOAN  
ASSET-BACKED CERTIFICATES, SERIES 2006-SLI  
and "JOHN DOE #1" through "JOHN DOE #10", the  
last ten names being fictitious and unknown to the  
plaintiff, the person or parties intended being the  
persons or parties, if any, having or claiming an  
interest in or lien upon the Mortgaged premises  
described in the Complaint,**

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**Defendants.**

-----X  
**DIBELLA, J.**

The following papers were read and considered on this motion by defendant Jose Arbo to dismiss the action for plaintiff's failure to take proceedings to enter default judgment within one year of defendant's default in appearing, pursuant to CPLR 3215(c):

- 1) Notice of Motion; Affirmation of Vanessa L. Williams, Esq.; Exhibits A-C;
- 2) Affirmation in Opposition of Margaret Burke Tarab, Esq.; Exhibits A-D; and
- 3) Reply Affirmation of Vanessa L. Williams, Esq.

In this mortgage foreclosure action, defendant Jose Arbo moves to dismiss the action for plaintiff's failure to take proceedings to enter default judgment within one year of his failure to appear, pursuant to CPLR 3215(c). Plaintiff opposes the motion. The

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motion is denied without prejudice to re-file as set forth herein.

This action was commenced by filing on July 3, 2012. The action seeks to foreclose a mortgage on the premises known as 395 Bedford Road, Bedford Hills, New York 10507 which secured a note executed by defendant Jose Arbo wherein he borrowed the principal sum of \$371,250. Defendant Jose Arbo was served on July 16, 2012 by service on a person or suitable age and discretion with a subsequent mailing on July 19, 2012. The Affidavit of Service was filed on July 20, 2012 and service was rendered complete on July 30, 2012. Defendant was required to appear or answer on or before August 29, 2012. No answer was served by defendant Arbo and no motion for default judgment has been made by plaintiff.

Defendant Arbo argues that the action should be dismissed because plaintiff failed to move for entry of default judgment on or before August 29, 2013. In the alternative, if the Court does not dismiss the action, defendant seeks an order allowing defendant to interpose an answer.

CPLR 3215(c) states that if the plaintiff fails to take proceedings for the entry of judgment within one year of defendant's default, the court, upon its own initiative or on motion, shall not enter judgment but shall dismiss the complaint as abandoned "unless sufficient cause is shown why the complaint should not be dismissed."

Plaintiff has demonstrated sufficient cause to warrant denial of the motion to dismiss the complaint. On December 10, 2012, a few months after defendant's default in appearing, plaintiff's counsel was notified by its client to place the file on hold for review

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of the loan for possible modification under the Department of Justice Programs. Counsel indicates: "Thus, the loan was being reviewed to determine if it qualified for any loan modifications or loss mitigation alternatives under the Department of Justice Program. Thus, the foreclosure could not proceed until such time as the hold was removed." Tarab Affirmation in Opp ¶ 8. As the file was under review for possible loss mitigation options, plaintiff did not intend to abandon the action. Thus, the motion to dismiss the complaint as abandoned is denied.

However, the Court notes that, as the review has concluded and the matter has been released from the Foreclosure Settlement Part, plaintiff shall proceed with this action. Its opposition to the motion, however, fails to indicate that it is prepared to proceed. Thus, although the motion to dismiss the complaint at this juncture has been denied, plaintiff is directed to file a motion for default judgment/order of reference on or before November 21, 2014 or the action will be subject to dismissal for plaintiff's continued failure to make a default judgment motion which will be deemed an abandonment of the action. If a motion is not made by November 21, 2014, defendant may re-file his application to dismiss for plaintiff's failure to file the default judgment motion as set forth herein.

As to the portion of defendant's motion which seeks an order from the court allowing defendant to interpose an answer "in the interests of justice", said application is denied. A party attempting to vacate his/her default must demonstrate a reasonable excuse for the default and a meritorious defense to the action. *Navarro v. A. Trenkman Estate, Inc.*, 279 AD2d 257, 258 (1st Dep't 2001); *Wehringer v. Brannigan*, 232 AD2d 206, 206 (1st Dep't

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1996). Defendant has provided absolutely no excuse for his failure to appear and answer in this action. As such, the application cannot be granted.

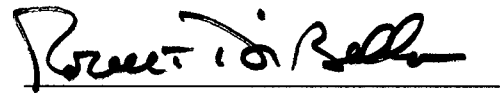
Accordingly, it is

ORDERED that defendant's motion is denied; and it is further

ORDERED that an appearance is scheduled on November 21, 2014 at 9:30 AM in Courtroom 102 to determine if the motion for default judgment/order of reference has been timely made; no further adjournments will be granted; the failure to timely file such motion pursuant to the directives herein will result in the dismissal of the action.

This is the Decision and Order of the Court.

Dated: October 8, 2014  
White Plains, New York

  
Hon. Robert DiBella, JSC

To: Cabanillas & Associates, PC  
Via e-filing

Frenkel, Lambert, Weiss, Weisman & Gordon, LLP  
Via e-filing