At an IAS Part FRP-5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the day of 202 .

MAR 04 2025

Present: Hon. Carolyn Mazzu Genovesi

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PNC BANK, NATIONAL ASSOCIATION SUCCESSOR BY MERGER TO NATIONAL CITY BANK,

Plaintiff,

-against-

ARI FARKAS; CHAYA FARKAS; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; RACHEL ROSENBERG; YITTY FARKAS; HERSHEL ROSENBERG,

Defendants,

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DECISION AND ORDER

Index No.: 523851/2017
Mot. Seq. 2

The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	**Numbered**
Order to Show Cause (MS # 2), Affirmation in Support Exhibits and Affidavits	83, 75-79
Memorandum of Law in Opposition, Affidavit and Exhibits	85-95

Upon the foregoing papers, defendants Ari Farkas and Chaya Farkas ("defendants") move, by Order to show Cause, to vacate the Order dated July 12, 2024, in this foreclosure action, pursuant to CPLR 3215(c) and 5015 (MS #2). The Order dated July 12, 2024, granted default judgment against all defendants, amended the caption, and appointed a Referee to compute the amount due to PNC Bank, National Association Successor by Merger to National City Bank ("plaintiff") and to determine whether the subject property could be sold in one parcel.

Defendants contend plaintiff failed to prosecute this case, and the matter should be dismissed as abandoned. Under 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." "Upon a showing of the requisite one year of delay, dismissal is mandatory in the first instance." *Aurora Loan Services, LLC v. Hiyo,* 130 A.D.3d 763, 764 (2d Dep't 2015). "In a mortgage foreclosure action, a plaintiff satisfies the requirements of CPLR 3215(c) when, within one year of a defendant's default, the plaintiff takes the 'preliminary step toward obtaining a default judgment of foreclosure and sale by moving for an order of reference' pursuant to RPAPL 1321." *U.S. Bank National Association v. Penate,* 176 A.D.3d 758, 760 (2d Dep't 2019) quoting *Wells Fargo Bank, N.A. v. Daskal*, 142 A.D.3d 1071, 1073 (2d Dep't 2016). When "a plaintiff fails to seek leave to enter a default judgment within one year after the default has occurred, the action is deemed abandoned." *Butindaro v. Grinberg*, 57 A.D.3d 932 (2d Dep't 2008). "Furthermore, where an action is subject to a mandatory settlement conference (see CPLR 3408), the one-year deadline imposed by CPLR 3215(c) is tolled while settlement conferences are pending." *Deutsche Bank Natl. Trust Co. v Attard*, 197 A.D.3d 619, 621 (2d Dep't 2021) quoting *Cumanet, LLC v Murad*, 188 A.D.3d 1149, 1151 (2d Dep't 2020).

Plaintiff commenced the instant case by filing a summons and complaint on December 12, 2017. Defendants never interposed an answer. However, this case was not released from the required CPLR 3408 settlement procedure until June 20, 2019. Plaintiff moved (MS #1), *inter alia,* for default judgment and to appoint a Referee on August 13, 2019, within one year of this matter being released from the settlement part. That motion was granted by the Order dated July 12, 2024 (nearly five years later). Accordingly, in light of the toll imposed by CPLR 3408, the Court finds plaintiff timely moved for default judgment.

Defendants further argue that the July 12, 2024 Order should be vacated, because the underlying motion was not properly served upon defendants. That motion was served, via NYSCEF, on defendants' prior counsel, D. Christopher Mason, Esq. Defendants contend that Mason only represented defendants for the limited purpose of the CPLR 3408 conferences and was not authorized to accept service of motion on defendant's behalf.

Defendants' contention that Mason, their prior counsel, represented them in a limited capacity is without merit. Under Administrative Order 286/16, an attorney may represent a client in a limited scope if the attorney (1) completed a certified training course in limited scope representation; (2) the attorney and client execute a retainer agreement that "clearly articulates the scope of limited representation," and the client gives informed consent to the limited nature of the representation; and (3) "the court deems the limited appearance otherwise appropriate under the circumstances.[1]" Defendants provided no evidence that their retainer agreement with Mason limited the scope of his representation. Additionally, there is no indication any Court ever deemed limited representation appropriate. Moreover, Mason sent two letters to this Court via NYSCEF, one dated February 6, 2024, and another dated April 26, 2024, that state he represented defendants without any limitation. Both letters further state, "[t]his letter in [sic] regarding the currently pending Motion for a Default Judgment and Order of Reference." Accordingly, the Court rejects any notion that Mason's representation of defendants was limited and did not cover the motion he addresses in two letters.

Defendants also request this Court toll interest, as defendants allege this case was improperly delayed. "In actions of an equitable nature, including foreclosure actions, 'the recovery of interest is within the court's discretion.' " *Wells Fargo Bank, N.A. v. Lee*, *208* A.D.3d 1384,

[1] The Legislature codified limited scope appearances by statute, in 2022, after this matter was released from settlement conferences. *See* CPLR 321(d).

1386 (2d Dep't 2022) quoting *Deutsche Bank Natl. Trust Co. v. Ould–Khattri,* 201 A.D.3d 701, 703 (2d Dep't 2022). The exercise of this discretion is governed by the particular facts of the case, including whether a party engaged in wrongful conduct, prejudiced the other party, or engaged in lengthy unexplained delay in prosecuting the action. *Bank of New York Mellon v. George,* 186 A.D.3d 661, 664 (2d Dep't 2020). Defendants do not prove, or even argue, that plaintiff engaged in wrongful acts or undue delay in this matter. Defendants also do not explain how they would be prejudiced if interest is not tolled. Any delay that occurred in this action is attributable to the COVID-19 pandemic and the Court and is not the fault of the plaintiff. Accordingly, defendant's request to toll interest is denied. For the forgoing reasons, it is

ORDERED that defendants' motion to vacate the Order dated July 12, 2024 (MS #2) is DENIED in all respects.

This constitutes the Decision and Order of the Court.

ENTER

Hon. Carolyn Mazzu Genovesi