At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 27th of October 2025

**PRESENT:** HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

FVX LLC IN TRUST FOR MORGAN STANLEY BANK, N.A.,

Plaintiff,

-against-

SHAUNISE ROBERTSON; CITY OF NEW YORK DEPARTMENT OF FINANCE PARKING VIOLATIONS BUREAU; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; CRIMINAL COURT OF THE CITY OF NEW YORK; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; UNITED STATES OF AMERICA; "JOHN DOE #1" through "JOHN DOE #10" inclusive, the names of the ten last name Defendants being fictitious, real names unknown to the Plaintiff, the parties intended being persons or corporations having an interest in, or tenants or persons in possession of, portions of the mortgaged premises described in the Complaint

Defendants.

**Index No. 520063/2023**

**Decision, Order and Judgment (Motion Seq.1)**

| Papers | Numbered |
|---|---|
| Notice of Motion | NYSCEF Doc. 30-43 |

Upon the foregoing papers, the motion is determined in accordance with this Decision, Order and Judgment as follows:

## Procedural History

This action was commenced on July 12, 2023 seeking to foreclose a mortgage encumbering the property known as 1623 Pacific Street, Brooklyn, NY 11213 (the "property"). Defendant Shaunise Robertson ("defendant") was purportedly served on July 19, 2023 pursuant to CPLR 308(2) and the affidavit of service was filed on July 26, 2023. Service was deemed complete ten days later on August 5, 2023. Defendant's time to answer thereafter expired on September 4, 2023.

On August 9, 2023, prior to defendant's default, plaintiff filed a request for judicial intervention to schedule residential foreclosure settlement conferences. Conferences were held on September 12, 2023 and October 11, 2023 whereupon the matter was released from the settlement part due to the non-appearance of defendant.

On May 21, 2025, Plaintiff filed the instant motion for a default judgment and order of reference. More than one year has elapsed since the defendants' default and plaintiff offers no explanation for its delay in seeking a default judgment.

**Discussion**

CPLR 3215(c) provides that "[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, without costs, *upon its own initiative or on motion,* unless sufficient cause is shown why the complaint should not be dismissed." CPLR 3215(c)[emphasis added]. The Legislature's choice of "shall" rather than "may" is outcome-determinative. The provision is not discretionary, it is compulsory.

The Court of Appeals long ago recognized that judges are not merely *authorized* but *obligated* to enforce CPLR 3215(c) *sua sponte*. In *Perricone v. City of New York*, 62 NY2d 661, 663 [1984], the Court affirmed *a sua sponte* dismissal on precisely these grounds, holding that "the Appellate Division exercised its authority under CPLR 3215 (subd. [c]) and dismissed the complaint on its own initiative,"[1] and rejecting any due-process objection on the ground that the plaintiff "was aware for more than ten years that the city had not answered yet failed to move for a default judgment." *Id.* at 663.[2] The statute is therefore self-executing: once the one year has lapsed, the burden shifts to the plaintiff to demonstrate "sufficient cause"-and if none is shown, dismissal must follow as a matter of law.[3]

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[1] As explained *infra*, dismissal under CPLR 3215(c) is *required-not* simply "authorized"-where the one year lapses and no "sufficient cause" is shown. The issue in *Perricone* was whether the *Appellate Division* had the authority to dismiss an action sua sponte under CPLR 3215(c), not whether dismissal was discretionary versus mandatory. On this latter question, the law is well-settled: "This statute is strictly construed, as the language of CPLR 32 I 5(c) is not, in the first instance, discretionary, but mandatory, inasmuch as courts 'shall' dismiss claims for which default judgments are not sought within the requisite one-year period, as those claims are then deemed abandoned". *Greenpoint Mtge. Funding, Inc. v Recinos,* 241 AD3d 796, 798 [2d Dept 2025], *quoting Ocwen Loan Servicing, LLC v Buonauro,* 233 AD3d 972, 974 [2d Dept 2024]

[2] While there appears to be conflicting holdings from the Appellate Division to enforce the abandonment rule when raised for the first time on appeal *(compare e.g. Bank of New York Mellon v Daniels,* 180 AD3d 738, 739 [2d Dept 2020] *with e.g. Perricon and PHH Mortg Corp. v Davis,* 111 AD3d 1110, 1113 [3d Dept 2013]), such a conflict is not at issue here because this Court must, consistent with CPLR 3215(c) and *Perricone,* dismiss where, as here, more than one year has elapsed since the default and no showing of"sufficient cause" was made by plaintiff.

[3] For this reason, this Court respectfully disagrees with *Lakeview Loan Servicing, LLC v Iannuzzi,* 84 Misc 3d 768 [Sup Ct Suffolk County 2024] which held that a plaintiff should be ordered to show cause why "sufficient cause" exists before a cou11 sua sponte dismisses a complaint under CPLR 3215(c). As both the plain text and *Perricone* reflect, a plaintiff who moves for a default beyond the one-year is on notice of the untimeliness of its own motion and thus has an affirmative obligation in its moving papers to demonstrate "sufficient cause". *See Id; Citimortgage, Inc. v Sahai,* 172 AD3d 552 [1st Dept 2019]["An action is deemed abandoned where a default has occurred and a plaintiff has failed to take proceedings for the entry of a judgment within one year thereafter *unless plaintiff has shown [in its moving papers] "sufficient* cause"][emphasis added]. The Court of Appeals expressly held in *Perricone* that a *sua sponte* dismissal under CPLR 3215(c) presents no due process issue. *See Perricone,* 62 NY2d at 663. Hence, any due

**Legislative Intent and Statutory Design**

This mandatory character was not accidental; it was *deliberately written into the CPLR to correct the deficiencies* of the prior rule under Civil Practice Act § 181. Under the old statute, dismissal of a stale claim was left to judicial discretion - a discretion that the Legislature found, in practice, was rarely exercised. The legislative history leaves no doubt why the Legislature replaced discretionary power with mandatory command. In explaining the defect CPLR 3215(c) was designed to cure, the drafters stated:

> "Section 181 of the Civil Practice Act recognizes plaintiffs duty of diligence, by providing that the court in its discretion may dismiss the action for failure to prosecute if the plaintiff unreasonably neglects to proceed in the action ... Practical experience shows that the court exercises this power, if at all, only sparingly and with hesitation even in cases of excessive delay. The defect apparent in the present law is a matter of public as well as private concern. The same policy considerations which make it necessary to prevent the plaintiff from unduly delaying the proceedings after issue has been joined apply to undefended actions. The policy of repose underlying the statute of limitations would be defeated if a plaintiff were permitted to postpone action in a default case and thus create an indefinite hiatus in the proceedings."

Bill Jacket Supplement, Laws 1962, chapter 308, CPLR 3215(c), Thirteenth Annual Report of The Judicial Council of the State of New York, at 215-216.

The drafters expressly recognized that discretionary dismissal was "exercised sparingly", was a "defect" and had failed to prevent "an indefinite hiatus in the proceedings." Bill Jacket Supplement, Laws 1962, chapter 308. CPLR 3215(c). CPLR 3215(c) was therefore drafted for the deliberate purpose not merely to *authorize* dismissal but to *require* it - to prevent stale litigation from lingering merely because the defendant defaulted. The Legislature deliberately converted judicial *discretion* into judicial *obligation.*

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process concerns are unfounded in light of the "upon its own initiative" language in CPLR 3215(c) itself. *See N. Laramie Land Co. v Hoffman,* 268 US 276, 283 [1925][ *"All persons are charged with knowledge of the provisions of statutes* and must take note of the procedure adopted by them and when that procedure is not unreasonable or arbitrary there are no constitutional limitations relieving them from conforming to it"][emphasis added]; *Anderson Nat. Bank v Luckett,* 321 US 233, 243 [1944]["The statute itself is notice" for purposes of procedural due process]; *see also Wheelock v Wheelock,* 4 NY2d 706 [1958]. Much like, for example, a movant under CPLR 5015(a)(1) is required (and is on notice of the requirement) to demonstrate both a reasonable excuse and a potentially meritorious defense, so too a movant under CPLR 3215 is on notice that, if the motion is made more than one year after default, that the movant must demonstrate "sufficient cause" to avoid dismissal.

Moreover, a plaintiff who is aggrieved by a *sua sponte* CPLR 3215(c) dismissal is not without recourse; it may move to vacate the order under CPLR 5015(a)(1). *See Fed. Natl. Mtge. Assn. v Mack,* 188 AD3d 655, 656 [2d Dept 2020] and if unsuccessful directly appeal from the denial of that motion. *See Id.* Alternatively, it may move for leave to appeal directly from the *sua sponte* dismissal order under CPLR 5701(c) (or request that the Appellate Division treats its notice of appeal as a request for leave to appeal under CPLR 5701(c). *See Saxon Mtge. Services, Inc. v Reynoso,* 232 AD3d 642, 642 [2d Dept 2024]; *Chase Home Fin., llC v Dasuja,* 204 AD3d 638, 638 [2d Dept 2022].

**The Mandatory Nature of CPLR 3215(c) Reflects that Courts Have No Ministerial Duty to Enter Default Judgments**

The mandatory character of CPLR 3215(c) is further confirmed by the well-settled rule that a court does not have a *ministerial* duty to grant default judgment. Default judgment is never automatic. Even where a defendant fails to appear or answer, the court retains the obligation to determine whether the plaintiff has established the viability of its claim and the right to relief. As the Second Department has repeatedly held, "[a] court does not have a "mandatory, ministerial duty to grant a motion for leave to enter a default judgment". *Weaver v Hatem,* 241 AD3d 1393 [2d Dept 2025]; *B&H Flooring, LLC v Folger,* 228 AD3d 809, 812 [2d Dept 2024]. Thus, even in the posture of default, the court exercises judicial judgment, not ministerial rubber-stamping.

And because the power to grant a default judgment is discretionary, it necessarily follows that the Legislature may cabin or withdraw that power where policy requires. That is what CPLR 3215(c) does. Once a plaintiff allows more than one year to elapse without taking proceedings for the entry of judgment, the court is not merely *permitted* to dismiss - it is prohibited from awarding default judgment. The statute is a direct restraint on judicial authority.

CPLR 3215(c) does not merely confer a *right* on defendants - it imposes a *limit* on *this Courts power.* Once one year has elapsed after the default without "proceedings for the entry of judgment," the action "must be deemed abandoned." *Santoli v 475 Ninth Ave. Assoc.,* 38 AD3d 411, 413 n*1 [1st Dept 2007]), and relief in the form of a default judgment thereafter is "unavailable". *A & C Constr., Inc. v NYC Haus. Auth.,* 32 AD3d 762, 763 [1st Dept 2006]). That mandate is *directed to the court,* not the litigants: "CPLR 3215(c) requires [the court] to dismiss a complaint as abandoned". *Morton* v *Morton,* 136 AD2d 902,902 [4th Dept 1988]), and the statute "is not discretionary, but mandatory". *Deutsche Bank Natl. Tr. Co. v Cruz,* 173 AD3d 610, 610 [1st Dept 2019]). Accordingly, courts are simply without power to ignore the dictates of the statute; once the statutory year lapses without a timely application for judgment, "courts may not excuse the lateness and 'shall' dismiss the claim". *Bazile v Saleh,* 190 AD3d 811, 812 [2d Dept 2021]). To do otherwise would constitute an impermissible "ignor[ing of] express limiting statutory provisions". *Ballard v Billings & Spencer Co.,* 36 AD2d 71, 74-75 [4th Dept 1971][explaining, with respect to CPLR 3215(c), that "the court is not at liberty, in the exercise of its fundamental common-law right to manage its calendars, to ignore express limiting statutory provisions when framing sanctions against litigants who have been dilatory in prosecuting or defending an action"]; *See Hoppenfeld v. Hoppenfeld,* 220 AD2d 302, 303 [1st Dept 1995]["Where, as here, plaintiffs failed to pursue a default judgment within one year of the default in answering ... dismissal of the underlying action as abandoned is *required'][emphasis* supplied].

Indeed, the obligation on courts to dismiss accrues upon expiration of the statutory period, not upon a litigant's making of a motion seeking such relief. *See, e.g., Gayle v Parker,* 300 AD2d 145, 146 [1st Dept 2002]["Plaintiff's failure to take proceedings for entry of judgment for even one year after the decedent's default *required* that the complaint be dismissed as abandoned"] [emphasis added]; *Cirtron v Curiale,* 273 AD2d 183, 184 [1st Dept 2000]["if respondent were in default, petitioner's failure to move for judgment within one year thereafter would have *required* dismissal of the petition (CPLR 3215[c])"][emphasis added]. Thus, the dictates, restrictions, and commands of CPLR 3215(c) are primarily directed to the Court. Caselaw does not frame CPLR

3215(c) necessarily as only a right or entitlement of a defendant, but as a duty of the court. The Court, rather than the litigant, is the actor charged with the burden of taking the initiative and dismissing upon expiration of the statutory period. A court's failure to do so, and its election to instead issue judgment outside of the statutory period, would be an ultra-vires act. *See e.g., Ballard,* 36 AD2d at 75 [noting that courts are prohibited from "ignor[ing] the express limiting statutory provisions" of CPLR 3215(c)].

It matters not whether the delay past the deadline is one day, thirty days or a year. *Furey v Milgrom,* 44 AD2d 91, 93 [2d Dept 1974]["the lapse of one day has the same significance as 10 or 20 or 60 days beyond the statute, for otherwise 'carelessness, or worse' would be encouraged."]; See also *Conolly v 129 E. 69th St. Corp.,* 127 AD3d 617 [1st Dept. 2015][barring motion made one day beyond deadline].

**The Second Department's Uniform Application of the *Sua Sponte* Dismissal Mandate**

The Second Department has consistently and uniformly enforced this mandate exactly as the Legislature intended. In *Chase Home Fin., LLC v Fernandez,* 175 AD3d 1381, 1383 [2d Dept 2019], the Court held that the Supreme Court "acted within its statutory authority in directing dismissal of the complaint as abandoned." Similarly, in *Ibrahim v Nablus Sweets Corp.,* 161 AD3d 961, 963 [2d Dept 2018], the Court emphasized that "CPLR 3215(c) expressly provides" for dismissal "upon its own initiative or on motion." The same *sua sponte* dismissal outcome followed in *US. Bank, Nat. Ass'n v Dorvelus,* 140 AD3d 850, 851 [2d Dept 2016]; *US. Bank, NA. v Laulicht,* 176 AD3d 892 [2d Dept 2019]; *US. Bank NA. v Juliano,* 184 AD3d 597, 600 [2d Dept 2020]; and *BAC Home Loans Servicing, L.P v Mazza,* 190 AD3d 908,909 [2d Dept 2021], which reiterated that dismissal is required "upon its own initiative." Most recently, *Deutsche Bank Natl. Tr. Co. v Ezagui,* 221 AD3d 964, 966 [2d Dept 2023], reaffirmed the same rule. This line of authority is not merely persuasive - it is the direct implementation of the Legislature's express corrective purpose. The uniformity of these holdings reflects not merely precedent but compulsion: the statute itself strips the court of discretion when abandonment is shown.

The Second Department has expressly recognized this limitation: where the one-year period has expired without proceedings to enter judgment, the court lacks authority to entertain or grant a default judgment motion at all. In *Noteworthy Foreclosure, LLC v Rodney-Ross,* 220 AD3d 676, 677 [2d Dept 2023], the Court held that claims not pursued within one year are "deemed abandoned" and therefore must be dismissed, not adjudicated, precisely because the plaintiff's delay triggered CPLR 3215(c)'s limitation on judicial power. See also *Wells Fargo Bank, NA. v St. Louis,* 229 AD3d 116 [2d Dept 2024]["CPLR 3215(c) provides that complaints shall be dismissed on the court's "own initiative" or upon motion if the plaintiff has failed to take proceedings within one year of an adversary party's default. Dismissals pursuant to that subdivision are specifically ***directed*** and permissible by the statute itself, though subject to a plaintiff showing sufficient cause as to why the complaint should not be dismissed"][emphasis added]; cf 3215(a)

Indeed, "[t]he statute gives the court discretion ***only*** where the plaintiff demonstrates "sufficient cause" as to why the complaint should not be dismissed" *Bank of Am., NA. v Shami,* 173 AD3d 954, 956 [2d Dept 2019][emphasis added].

**Application**

Here, plaintiff concedes that more than one year passed following the defendant's default, and concedes further that no application for default judgment was made during that time. Plaintiff has not identified, much less substantiated, "sufficient cause" to avoid statutory abandonment. Because CPLR 3215(c) does not permit a dormant complaint to linger indefinitely and because *sua sponte* dismissal is not only authorized but required, this Court is compelled to dismiss the action.[4]

At that point, dismissal is not a matter of grace, but a jurisdictional restraint: the court is stripped of authority to enter judgment.

The second amended complaint is therefore dismissed *sua sponte* as abandoned pursuant to CPLR 3215(c). The notices of pendency are cancelled pursuant to CPLR 6514(a). *See Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 [2d Dept 2021].

Accordingly, it is hereby

ORDERED AND ADJUDGED, that plaintiff's motion is DENIED; and it is further

ORDERED AND ADJUDGED, that this action is dismissed pursuant to CPLR 3215(c); and it further

ORDERED, that the Clerk is directed to cancel Notice of Pendency filed on July 12, 2023.

This constitutes the decision, order and judgment of the Court.

ENTER:

Hon. Menachem M. Mirocznik, J.S.C.

[4] This Coult notes that statutes imposing time limitations-such as CPLR 321S(c) and FAPA (L.2022 ch. 821)-serve as an indispensable and an especially important tool mandated by the legislative amendment in 1962 and extremely useful in foreclosure litigation, where thousands of stale and dormant actions clog already overburdened dockets, diverting judicial resources from diligently prosecuted matters and imposing needless administrative and financial burdens on the courts and, ultimately, on the taxpayers.