

**HSBC Bank USA v Burton**

2026 NY Slip Op 30078(U)

January 7, 2026

Supreme Court, Kings County

Docket Number: Index No. 512746/2021

Judge: Carolyn Walker-Diallo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 7th day of January 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

Index No.: 512746/2021

\_\_\_\_\_  
HSBC BANK USA, AS TRUSTEE, x

Plaintiff,

**DECISION/ORDER**

*-against-*

BARBARA BURTON, et al.,

Defendants.

\_\_\_\_\_  
x

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this Motion:

**Papers**

**Numbered**

Notice of Motion

NYSCEF Doc. Nos. 25-35

Motion Sequence #1

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

This action was commenced on May 27, 2021 by Plaintiff to foreclose upon a mortgage executed by Barbara Burton and Rolfe Burton (“Defendants”) encumbering the premises at 1465 Brooklyn Avenue, Brooklyn, New York (“premises”). Defendant Barbara Burton was personally served with the summons and complaint on June 10, 2021, and Defendant Rolfe Burton was served via suitable age and discretion service that same day. The affidavit of service was filed on June 17, 2021. Defendants have not answered.

Thereafter, settlement conferences were held on December 13, 2022, January 25, 2023, February 14, 2023, and March 7, 2023, at which time the matter was released from the settlement part for motion practice. The instant motion for default judgment and an order of reference was filed on February 5, 2025, and no opposition papers were received.

#### DISCUSSION

“Pursuant to CPLR 3215 (c), ‘[i]f the plaintiff fails to take proceedings for the entry of [a] 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.’ The language of CPLR 3215 (c) is not, in the first instance, discretionary, but mandatory, inasmuch as [the] 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.” *Noteworthy Foreclosure, LLC v. Rodney-Ross*, 220 A.D.3d 676, 677 (2d Dep’t 2023). The “one-year statutory time frame is not one year from the commencement of the action, but one year from when the defendant’s answer or responsive motion was due, which itself is measured from when service is deemed complete.” *Citibank, N.A. v. Kerszko*, 203 A.D.3d 42, 49 (2d Dep’t 2022).

Further, a claim will not be deemed abandoned if the party seeking a default judgment provides sufficient cause as to why the complaint should not be dismissed (CPLR 3215 [c]). Sufficient cause requires a showing of both an excuse for a plaintiff’s delay in seeking default and a meritorious claim (*Citimortgage, Inc. v. Sahai*, 172 A.D.3d 552 [1st Dep’t 2019]). The determination of whether an excuse is reasonable in any given instance is committed to the sound discretion of the motion court. *HSBC Bank USA, N.A. v. Seidner*, 159 A.D.3d 1035, 1036 (2d Dep’t 2018).

Moreover, “[i]t 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).” *U.S. Bank v. Dorestant*, 131 A.D.3d 467, 469 (2d Dep’t 2015); *see Aurora Loan Servs., LLC v. Gross*, 139 A.D.3d 772, 774 (2d Dep’t 2016); *see also Wells Fargo Bank v. Daskal*, 142 A.D.3d 1071, 1072-1073 (2d Dep’t 2016). Rather, “[a]s long as ‘proceedings’ are being taken, and these proceedings manifest an intent not to abandon the case but to seek a judgment, the case should not be subject to dismissal.” *Brown v. Rosedale Nurseries*, 259 A.D.2d 256, 257 (1st Dep’t 1999); *see U.S. Bank v. Duran*, 174 A.D.3d 768, 770 (2d Dep’t 2019); *Wells Fargo Bank v. Lilley*, 154 A.D.3d 795, 796 (2d Dep’t 2017); *HSBC Bank USA v. Alexander*, 124 A.D.3d 838, 839 (2d Dep’t 2015). In residential foreclosure cases, where a CPLR 3408 settlement conference is a necessary prerequisite to obtaining a default judgment, filing a request for judicial intervention (RJI)—a formal request for such a conference—constitutes taking proceedings for the entry of judgment under CPLR 3215 (c). *Citimortgage, Inc. v. Zaibak*, 188 A.D.3d 982, 983 (2d Dep’t 2020). However, an RJI filed before a defendant’s default axiomatically does not constitute taking proceedings within “one year after the default.” CPLR 3215 (c) (emphasis added); *see U.S. Bank N.A. v. DiGiovanni*, 231 A.D.3d 1077, 1078 (2d Dep’t 2024) (finding that plaintiff failed to establish that it took proceedings toward entry of judgment within one year after defendant’s default where plaintiff filed RJI before defendant’s default).

Here, the motion for default judgment was filed more than one year after Defendants’ defaults. Proof of service was filed on June 17, 2021. *See* Affidavits of Service, NYSCEF Doc. Nos. 11-13. Service was complete ten days later, on June 27, 2021. CPLR 308 (2) (providing that service upon a person of suitable age and discretion is complete ten days after filing proof). Defendants were required to answer within thirty days, by July 27, 2021. CPLR 320 (providing

that, where service is made pursuant to CPLR 308 [2], defendant's appearance shall be made within thirty days after service is complete). Defendants were thus in default on July 28, 2021. Therefore, Plaintiff was required to move for default by July 28, 2022, one year after Defendants' defaults. Plaintiff did not move for default until February 5, 2025, over two years later. Plaintiff offers no excuse or explanation for its delay in filing the motion. However, Plaintiff filed an RJI on December 16, 2021, approximately five months after the default. *See* RJI, NYSCEF Doc No. 15.

Recent decisions issued in Kings County Supreme Court by the Honorable Menachem M. Mirocznik have commented on the apparent unfairness of permitting a plaintiff who filed a late RJI to avoid dismissal, while a plaintiff who timely filed an RJI before the defendant's default cannot avail itself of that leniency. *See FVX LLC v. Robertson*, 2025 N.Y. Misc. LEXIS 8897 (Sup. Ct. Kings Co. 2025) and *LoanDepot.com LLC v. Ortner*, 2025 N.Y. Misc. LEXIS 8777 (Sup. Ct. Kings Co. 2025). These cases discuss at length the wisdom of regarding an RJI filing to constitute taking proceedings after default, finding that 22 NYCRR 202.12-a (b) (1) and CPLR 3408 (a) (1) require an RJI to precede the default under all circumstances where CPLR 3408 conferencing applies; and that it is incongruous to permit an act that the legislature requires to take place before a default to satisfy a separate statutory condition that applies after the default. *See Citibank, N.A.*, 203 A.D.3d at 74 (Barros, J. and Duffy, J., dissenting) (“[T]his issue-begs the question of why?”); *See* Senate Bill S5829B 2023 Legislative Session, addressing the “emerging crisis of public confidence in the judicial process,” citing *Deutsche Bank v. Latamorre*, 211 A.D.3d 811 (2d Dep’t 2022, Barros, J., dissenting); *see also U.S. Bank, N.A. v. DiGiovanni*, 2022 N.Y. Misc. LEXIS 38218 ¶ 2 (Sup. Ct. Kings Co. 2022) (“This appellate precedent driven result finds foursquare support in CPLR 3215 (c)'s plain language.”); *see also Newrez LLC v. Mulimbi*, 2025 NY Slip Op 34233(U) (Sup. Ct. Kings Co. 2025) (noting that the one-year deadline serves “as an indispensable

and an especially important tool in foreclosure litigation, where thousands of stale and dormant actions still 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”). This Court agrees.

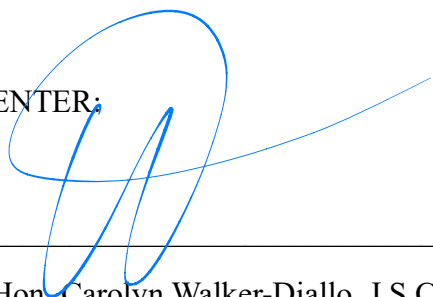
Nevertheless, Defendants do not raise these arguments. *See Misicki v. Caradonna*, 12 N.Y.3d 511, 519 (2009) (holding that courts are “not in the business of blindsiding litigants, who expect us to decide their appeals on rationales advanced by the parties, not arguments their adversaries never made”). The extant precedent of the Appellate Division, Second Department, requires that Plaintiff’s RJL, filed within one year after a defendant’s default, be considered “taking proceedings” under CPLR 3215 (c). Therefore, Plaintiff’s motion for a default judgment is GRANTED.

#### CONCLUSION

Accordingly, Plaintiff’s motion is GRANTED. An accompanying order will issue. The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested was not addressed by the Court, it is hereby DENIED. Plaintiff shall serve notice of entry within fifteen (15) days of upload of the instant order and accompanying order to NYSCEF upon Defendants and all parties who have appeared in this action, with parties not participating in e-filing to be noticed via first-class mail.

This constitutes the Decision and Order of the Court.

ENTER:



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Hon. Carolyn Walker-Diallo, J.S.C.