

HSBC Bank USA, N.A. v Foster
2026 NY Slip Op 31956(U)
April 15, 2026
Supreme Court, Kings County
Docket Number: Index No. 20314/2012
Judge: Menachem M. Mirocznik
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

KINGS COUNTY CLERK
FILED

2026 MAY -6 A 9:52

At IAS Part FRP5 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 15th of April 2026

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

HSBC BANK USA, NATIONAL ASSOCIATION,
AS TRUSTEE FOR FREEMONT HOME LOAN
TRUST 2005-B, MORTGAGE-BACKED
CERTIFICATES, SERIES 2005-B

Plaintiff,

-against-

JOSLET FOSTER, JOSLET FOSTER CORP.,
ISMAEL CORTIJO, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW
YORK CITY PARKING VIOLATIONS BUREAU,
CITY OF NEW YORK TRANSIT ADJUDICATION
BUREAU, NYC BUREAU OF HIGHWAY
OPERATIONS, CITIMORTGAGE INC., ANTHONY
ONUA, 888 LLC, ADINE HAMILTON, LINDSAY
BROWNE, IRA CITRON.

Defendants.

Index No. 20314/2012

**Decision, Order and Judgment
(Motion Seq. 3 and 4)**

Papers	Numbered
Notice of Motion (Seq. 3)	NYSCEF Doc. 85-90
Opposition Papers (Seq. 3)	NYSCEF Doc. 96-108
Reply Papers (Seq. 3)	NYSCEF Doc. 130-131
Notice of Motion (Seq. 4)	NYSCEF Doc. 91-95
Opposition Papers (Seq. 4)	NYSCEF Doc. 109-121
Reply Papers (Seq. 4)	NYSCEF Doc. 128-129

Upon the foregoing papers, the motion(s) is/are determined in accordance with this Decision, Order and Judgment as follows:

Relevant Procedural and Factual History

This action was commenced in September 2012, seeking to foreclose a mortgage (“mortgage”) executed by defendant Joslet Foster (“Foster”) encumbering the property known as 1846 Pacific Street, Unit 1, Brooklyn, NY 11233 (“property”).

On February 14, 2008, Foster transferred the property to defendant Anthony Onua

(“Onua”), who executed a mortgage in favor of defendant CitiMortgage, Inc. (“CitiMortgage”). On March 10, 2011, Foster executed a deed purporting to transfer title of the property to defendant Joslet Foster Corp. (“Foster Corp.”)

On April 28, 2011, Defendant CitiMortgage commenced a quiet title action in connection to the property entitled CitiMortgage, Inc. v. Onua, et. al., under Index No. 9640/2011). By order dated October 2, 2019, the Court granted CitiMortgage’s motion for summary judgment setting aside the deed from defendant Foster to defendant Foster Corp. and held that defendant Onua holds absolute title to the property. The October 2, 2019 order was affirmed on appeal by the Appellate Division Second Department. See Citimortgage, Inc. v Onua, 218 AD3d 528 [2d Dept 2023]. A judgment was subsequently entered therein on December 22, 2025.

Defendant Onua was served in this action on October 12, 2012, and Defendant Foster was served on October 17, 2012. Neither defendant answered or appeared.

On January 7, 2013, defendant Foster Corp. joined issue with the service an answer with affirmative defenses.

Defendant Foster filed four bankruptcy petitions in the United States Bankruptcy Court for the Eastern District of New York: Case No. 14-46136, filed on or about September 22, 2014; Case No. 15-44750; Case No. 16-45666; and Case No. 17-45208. The last of these petitions was dismissed on October 18, 2017.

On March 16, 2020, the Chief Administrative Judge promulgated the first COVID-19 related Administrative Order (AO/68/2020), suspending all residential foreclosure proceedings statewide. The COVID suspension of foreclosure matters was lifted by Administrative Order dated January 16, 2022 (AO/35/2022).

On November 21, 2024, the Court granted CitiMortgage’s motion and dismissed the complaint as against CitiMortgage pursuant to CPLR 3215(c). The Court found that it was undisputed that CitiMortgage never answered and that plaintiff did not move for a default judgment or an order of reference within one year of CitiMortgage’s default. The Court further found that plaintiff failed to establish a reasonable excuse for its delay, noting that the last of the bankruptcy matters ended on October 18, 2017, and from that date through March 16, 2020 when the COVID stay began, there were no filings over a period of more than two and one-half years. The Court additionally found that when the COVID stays were lifted on January 16, 2022, plaintiff allowed an additional two and one-half years or more to elapse, taking no action. The Court concluded that plaintiff had not provided a reasonable excuse for the delay of over five years of failure to proceed.

On January 29, 2025, the Court granted plaintiff’s motion for default judgment against the non-answering defendants, excluding CitiMortgage, appointed Gregory M. LaSpina, Esq., as Referee to compute amounts due, and amended the caption to substitute Adine Hamilton, Lindsay Browne, and Ira Citron and to remove CitiMortgage.

Defendant Onua and Defendant Foster separately move to dismiss the complaint as

pursuant to CPLR 3215[c]. Defendant Onua and Defendant Foster argue that they were served in October 2012 and defaulted by failing to answer or appear; that plaintiff did not file a motion for default judgment until October 31, 2024, more than 12 years after Onua's default; that CPLR 3215[c] mandates dismissal when plaintiff fails to take proceedings for entry of judgment within one year of a default.

Plaintiff opposes the motions arguing that: (1) the law of the case doctrine bars the motion because the January 2025 Order already adjudicated plaintiff's entitlement to default judgment (2) plaintiff has a reasonable excuse for the delay, identifying three tolling periods: alleged CPLR 3408 settlement conferences from August 7, 2013 through March 17, 2017, totaling 1,318 days; four bankruptcy automatic stays totaling approximately 463 days; and COVID-19 administrative orders from March 16, 2020 through January 16, 2022 and (3) that public policy and equity favor denying the motion

In reply defendant Onua argues that plaintiff does not adequately demonstrate a reasonable excuse for the delay, that the court is not precluded from considering a CPLR 3215[c] motion even after entry of a default judgment and order of reference, that defendant Foster's bankruptcy filings do not excuse the delay as to Onua, because the automatic stays from Foster's bankruptcies stayed the action only as to Foster, and that the COVID-19 administrative stay does not independently constitute reasonable excuse for the years of delay before and after the stay.

In reply defendant Foster argues that: (1) the law of the case doctrine does not apply, (2) that plaintiff fails to establish sufficient cause, identifying approximately six years of unexplained delay across four gaps: approximately 10 months from defendants' defaults in late 2012 to the first settlement conference in August 2013; approximately six months from the end of the conferences in March 2017 to the first bankruptcy in September 2017; approximately two and a half years from the dismissal of the last bankruptcy in October 2017 to the COVID-19 stay in March 2020; and approximately two and a half years from the lifting of the COVID-19 stay in January 2022 to plaintiff's motion for default judgment in October 2024 and (3) that public policy favors dismissal, as CPLR 3215[c] exists precisely to prevent this type of indefinite delay.

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 failure to timely seek a default may be excused if sufficient cause is shown why the complaint should not be dismissed, which requires the plaintiff to proffer a reasonable excuse for the delay in timely moving for a default judgment and to demonstrate that the cause of action is potentially meritorious... The determination of whether an excuse is reasonable is committed to the sound discretion of the motion court" *Chase Home Fin., LLC v Dasuja*, 204 AD3d 638, 639-40 [2d Dept 2022] [internal citations and quotation marks omitted.]

Here, it is undisputed that plaintiff has not sought any relief for over twelve years since defendants' default.

Contrary to plaintiff's contentions, the law of the case doctrine does not bar dismissal of the complaint pursuant to CPLR 3215[c] even after entry of a default judgment and order of reference. See *Fed. Natl. Mtge. Assn. v Marty*, 219 AD3d 581, 583 [2d Dept 2023][“Here, contrary to the Supreme Court's determination, since Miss Jones's cross-motion, inter alia, pursuant to CPLR 3215 (c) was made prior to the entry of the order and judgment of foreclosure and sale, that branch of the cross-motion was timely...Furthermore, the court was not precluded from further consideration of the issue under the doctrine of law of the case...The order dated December 12, 2017, did not resolve on the merits whether the plaintiff abandoned the action pursuant to CPLR 3215(c)”][internal citations omitted]; See also *CitiMortgage, Inc. v Goldstein*, 187 AD3d 841, 843 [2d Dept 2020][“Here, since the defendant's cross motion was made prior to the entry of the order and judgment of foreclosure and sale, contrary to the Supreme Court's determination, that branch of the cross motion which was, in effect, pursuant to CPLR 3215 (c) was timely...Furthermore, we disagree with the court's determination that it was precluded from further consideration of the issue under the doctrine of law of the case.”][internal citations omitted].

Moreover, defendants are correct that plaintiff failed to demonstrate a reasonable excuse for its protracted delay in taking proceedings for entry of a default judgment. Even accounting for the delays attributable to the stays imposed due to the serial bankruptcy filings and the COVID-19 moratoriums, plaintiff still failed to explain the various other periods of delay in seeking entry of a default judgment.

Indeed, the Court previously rejected the very same arguments raised by plaintiff determined that plaintiff failed to demonstrate a reasonable excuse for the delay in its November 21, 2024 order dismissing the action as against defendant CitiMortgage. Those findings are law of the case.

Therefore, the complaint must be dismissed pursuant to CPLR 3215[c] for the reasons set forth in *PNC Bank, National Association v Brown*, 88 Misc 3d 1220(A), 2026 NY Slip Op 50148(U) [Sup Ct, Kings County 2026][Mirocznik, J.]

As defendant Onua holds title to the subject property she is an indispensable party and this action may not proceed in her absence. Therefore, the complaint is dismissed in its entirety pursuant to CPLR 3215(c). See *LaSalle Bank N.A. v Benjamin*, 164 AD3d 1223 [2d Dept 2018][“Chitra, as a fee owner of the property which was subject to the mortgage, was a necessary and indispensable party to the action...Once the complaint was dismissed against Chitra, the plaintiff could not continue the action against the other defendants”]; *Newton v Evers*, 215 NY 198 (1915)[“Julia E. Ferguson was the owner of the equity of redemption under her deed...She was a necessary party to any action brought to foreclose that mortgage, and without her presence the action could not proceed.”]; see also *MTGLQ Inv'rs, L.P. v Shay*, 190 AD3d 527 [1st Dept 2021][“Dismissal of the action as against Eaton requires discontinuation of the action as against Meldal as well”]; *Green Tree Servicing, LLC v Jean*, 244 AD3d 955 [2d Dept 2025][“As a fee owner of the property and mortgagor, [defendant] was an indispensable party to this foreclosure action...The absence of an indispensable party mandates dismissal of

the action, and the plaintiff cannot maintain the action as against the other defendants...Therefore, contrary to the plaintiffs contention, once the complaint was dismissed insofar as asserted against [defendant], the plaintiff could not continue the action against the remaining defendants.”][internal citations omitted]

Given the dismissal of the complaint, the notice of pendency filed herein must also be cancelled. See CPLR 6514; see also *Nationstar Mtge., LLC v Davis*, 240 AD3d 790 [2d Dept 2025]; *Bayview Loan Servicing, LLC v Starr-Klein*, 193 AD3d 807 [2d;Dept 2021].

Accordingly, it is hereby

ORDERED, that defendants Anthony Onua and Joslet Foster’s motions(seq. 3 & seq. 4) to dismiss the Complaint pursuant to CPLR 3215(c) are **GRANTED**; and it is further

ORDERED, that the Order dated January 29, 2025 is **VACATED**; and it is further

ORDERED AND ADJUDGED, that the complaint is **DISMISSED** in its entirety; and it is further

ORDERED, that the Clerk is directed to cancel the notices of pendency filed on October 12,2012 and June 27, 2023.

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

ENTER:


Hon. Menachem M. Mirocznik, JSC

KINGS COUNTY CLERK
FILED
2026 MAY - 6 A 9:52