

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: April 2, 2026

CV-24-1317

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U.S. BANK NATIONAL  
ASSOCIATION, as Trustee,  
Appellant,

v

MEMORANDUM AND ORDER

RALPH THIBAUT,  
Respondent,  
et al.,  
Defendants.

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Calendar Date: January 9, 2026

Before: Clark, J.P., Pritzker, McShan, Powers and Corcoran, JJ.

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*Friedman Vartolo LLP*, New York City (*Sean Monahan* of counsel), for appellant.

*Dombrow Law Firm*, Syracuse (*Russell W. Dombrow* of counsel), for respondent.

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Pritzker, J.

Appeal from an order of the Supreme Court (Mary Farley, J.), entered April 15, 2024 in St. Lawrence County, which, among other things, denied plaintiff's motion for default judgment.

In 2001, defendant Ralph Thibault (hereinafter defendant) and Stephanie Thibault (hereinafter the wife)<sup>1</sup> executed a note in favor of Beneficial Homeowner Service

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<sup>1</sup> The wife passed away in November 2021 prior to the commencement of this action, and, as a result, defendant will be referred to singularly. This is despite the fact

Corporation secured by a mortgage encumbering two separate properties located in St. Lawrence County. In November 2021, defendant and the wife failed to make their monthly payment and, therefore, defaulted on the note. After two earlier assignments, the mortgage was assigned to plaintiff in August 2022 and, in December 2022, this mortgage foreclosure action was commenced. Defendant thereafter participated in settlement conferences from May 2023 until September 2023, when the action was released from the settlement conference part. In June 2023, while still in the settlement conference part, counsel for defendant filed a notice of appearance. In November 2023, plaintiff moved for default judgment and an order of reference, and, in December 2023, defendant cross-moved for permission to file a late answer and for dismissal of the complaint. Over plaintiff's opposition, Supreme Court denied plaintiff's motion and granted the portion of defendant's cross-motion allowing a late answer. Plaintiff appeals.

"In order to establish entitlement to a default judgment, a plaintiff is required to submit proof of (1) valid service of the summons and the complaint, (2) the facts constituting the claim and (3) the default" (*Miller Greenberg Mgt. Group, LLC v Couture*, 193 AD3d 1273, 1274 [3d Dept 2021] [citation omitted], citing CPLR 3215 [f]). In support of its motion, plaintiff submitted, among other things, an attorney affirmation with attached exhibits. As relevant here, included in the attached exhibits is the summons and verified complaint as well as affidavits of service demonstrating personal service in January 2023. Additionally, in her affirmation, plaintiff's attorney averred that, as of November 20, 2023, the date of filing of the motion for a default judgment and order of reference, defendant had defaulted in filing an answer. Accordingly, "plaintiff[ ] established [its] entitlement to a default judgment against . . . defendant[ ] on the issue of liability" (*Rosenzweig v Gubner*, 194 AD3d 1086, 1089 [2d Dept 2021], *lv dismissed* 38 NY3d 1126 [2022]; *see Bank of Am., N.A. v Keefer*, 245 AD3d 774, 778 [2d Dept 2026]; *Deutsche Bank Natl. Trust Co. v Amoah*, 244 AD3d 812, 814 [2d Dept 2025]). "Moreover, [contrary to Supreme Court's determination,] plaintiff was not required to demonstrate its compliance with RPAPL 1304 in order to obtain a default judgment, since the failure to comply with RPAPL 1304 is not a jurisdictional defect, and that defense was never raised by [defendant], who failed to answer the complaint" (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2019] [internal quotation marks, brackets, ellipsis and citations omitted]; *accord HSBC Bank USA, N.A. v Thorne*, 189 AD3d 1193, 1195 [2d Dept 2020]).

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that the wife is named as a party in this action, the cross-motion was purportedly filed by both her and defendant, and she is listed on the brief before this Court.

Defendant opposed plaintiff's motion for a default judgment by filing a cross-motion for leave to file a late answer. In this regard, "[t]o defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense" (*HSBC Bank USA, N.A. v Thorne*, 189 AD3d at 1195 [internal quotation marks and citation omitted]; see *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d at 901; see also *Wang v IV-CVCF NEB REO, LLC*, 227 AD3d 937, 939 [2d Dept 2024]; *US Bank N.A. v Salvatierra*, 205 AD3d 757, 158 [2d Dept 2022]). In support of his cross-motion, defendant proffered an attorney affirmation, memorandum of law and a proposed verified answer. In these submissions, "defendant failed to allege that he did not default or that he had a reasonable excuse for his default" (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d at 901). In fact, defendant did not proffer *any* excuse, reasonable or otherwise, for the delay (see generally *Bachvarov v Khaimov*, 224 AD3d 724, 726 [2d Dept 2024]; compare *Arnav Indus. Inc. Profit Sharing Plan & Trust v 3449-3461 Hamilton Ft, LLC*, 237 AD3d 786, 789 [2d Dept 2025]).<sup>2</sup> Given this failure of proof, it is "unnecessary to address whether defendant[ ] ha[s] established a meritorious defense" (*Bank of N.Y. v Wells*, 244 AD3d 1438, 1439-1440 [3d Dept 2025]; see *Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d at 901). Accordingly, Supreme Court erred in denying plaintiff's motion for a default judgment and order of reference and granting defendant's cross-motion seeking leave to file a late answer.

Clark, J.P., McShan, Powers and Corcoran, JJ., concur.

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<sup>2</sup> As defendant clearly stated in his memorandum of law in further support of his cross-motion, he was seeking leave to file a late answer pursuant to CPLR 2004, *not* seeking to vacate a default judgment, as defendant had not yet been found to be in default. Bearing this in mind, the denial of defendant's cross-motion based upon a failure of proof should not be read as a determination of the merits of any subsequent motion to vacate the default, should defendant choose to so move. Succinctly stated, the denial of defendant's motion to file a late answer does not preclude defendant from subsequently seeking vacatur of the default judgment pursuant to CPLR 5015 (a) (1) (see generally *Carrington Mtge. Servs., LLC v Fiore*, 206 AD3d 1306 [3d Dept 2022]; *Bank of Am., N.A. v Hirsch*, 186 AD3d 1469 [2d Dept 2020]).

ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as denied plaintiff's motion for a default judgment and order of reference and granted the portion of defendants' cross-motion seeking leave to file a late answer; motion granted and cross-motion denied; and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court