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

Decided and Entered: November 5, 2026 CV-25-0694

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Trustee,

Appellant, MEMORANDUM AND ORDER

v

MARIE LEIS et al.,

Defendants.

Calendar Date: September 8, 2026

Before: Pritzker, J.P., Ceresia, Powers, Corcoran and Ryba, JJ.

McCabe, Weisberg & Conway, LLC, Port Chester (*Robert Yusko* of counsel), for appellant.

Ryba, J.

Appeal from an order of the Supreme Court (Meagan Galligan, J.), entered April 4, 2025 in Sullivan County, which denied plaintiff's motion to, among other things, vacate a prior order.

This appeal arises from a mortgage foreclosure action commenced by plaintiff following an alleged default on a promissory note executed by David A. Leis (hereinafter decedent) and secured by a mortgage executed by decedent and his wife, defendant Marie Leis, on residential property in Sullivan County. Following mandatory settlement conferences, Supreme Court (Meddaugh, J.) issued an order in March 2017 directing plaintiff to file a motion for an order of reference no later than December 31, 2017. The order expressly advised that the specified date constituted a scheduled call of the calendar

and that, should plaintiff fail to timely file the required motion, the matter would be marked off the calendar and thereafter dismissed if plaintiff failed to timely move to restore the action within one year. Plaintiff failed to submit the required motion by the court-imposed deadline. In January 2018, Supreme Court notified plaintiff that the action had been marked off the calendar based upon its failure to comply with the court's directive. Thereafter, plaintiff failed to move to restore the matter within one year, and, by order dated January 7, 2019, Supreme Court dismissed the action without prejudice pursuant to 22 NYCRR 202.27. More than six years later, plaintiff moved pursuant to CPLR 5015 (a) (1) to vacate the dismissal and restore the matter to the active calendar, together with other related relief. Supreme Court (Galligan, J.) denied the motion, finding that plaintiff failed to establish a reasonable excuse for its prolonged delay in seeking to vacate the default. Plaintiff appeals.

We affirm. We have consistently held that 22 NYCRR 202.27 permits dismissal of an action as abandoned where a plaintiff fails to timely comply with a court directive to move the litigation forward (*see Nadler v County of Albany*, 237 AD3d 1461, 1461 [3d Dept 2025]; *U.S. Bank N.A. v Hartquist*, 227 AD3d 1149, 1150 [3d Dept 2024]; *Bank of N.Y. v Wells*, 222 AD3d 1237, 1239 [3d Dept 2023]; *Bank of N.Y. Mellon v Vaiana*, 218 AD3d 1094, 1096 [3d Dept 2023]). A plaintiff seeking to vacate a dismissal entered pursuant to 22 NYCRR 202.27 must demonstrate both a reasonable excuse for the default and a potentially meritorious cause of action (*see U.S. Bank N.A. v Hartquist*, 227 AD3d at 1151; *Bank of N.Y. Mellon v Vaiana*, 218 AD3d at 1096; *Hayes v Village of Middleburgh*, 140 AD3d 1359, 1361 [3d Dept 2016]). Whether those requirements have been satisfied is a determination that rests within the sound discretion of the court (*see Nadler v County of Albany*, 237 AD3d at 1462; *U.S. Bank N.A. v Hartquist*, 227 AD3d at 1151).

Here, Supreme Court (Meddaugh, J.) expressly advised plaintiff of the consequences of failing to timely comply with its directive and plaintiff neither adhered to the deadline nor sought an extension of time. After the matter was marked off the calendar in January 2018, plaintiff once again failed to take timely action to restore the matter, resulting in dismissal of the complaint in January 2019. Thereafter, plaintiff inexplicably allowed the matter to remain dormant for more than six years before seeking to vacate the dismissal in February 2025. Despite this prolonged period of inactivity, plaintiff submitted no affidavit from counsel or other individual with personal knowledge explaining the missed motion deadline, the failure to respond to the court's notification that the matter had been marked off the calendar, or the subsequent six-year delay in seeking to vacate the dismissal. Although plaintiff cited legal authority for the general

proposition that law office failure may, under appropriate circumstances, constitute a reasonable excuse for a default, plaintiff's submissions were devoid of any factual allegations to warrant invoking the doctrine. Indeed, plaintiff identified no specific calendaring error, office miscommunication or other facts demonstrating that its default was due to law office failure, nor did plaintiff offer any explanation whatsoever for the lengthy delay in moving to vacate the dismissal.

To the extent that plaintiff contends that defendants' alleged failure to file a notice of entry constitutes a reasonable excuse for the delay, we disagree. The filing of a notice of entry bears only upon the timeliness of a CPLR 5015 (a) (1) motion, not upon whether a reasonable excuse for a default has been established. Under these circumstances, Supreme Court (Galligan, J.) acted well within its discretion in concluding that plaintiff failed to demonstrate a reasonable excuse for its default. Because plaintiff failed to establish a reasonable excuse, Supreme Court was not required to determine whether plaintiff had otherwise demonstrated a potentially meritorious foreclosure action (*see U.S. Bank N.A. v Hartquist*, 227 AD3d at 1151; *Bank of N.Y. Mellon v Vaiana*, 218 AD3d at 1096).

Plaintiff's remaining contentions, including its assertion that Supreme Court should have exercised its inherent authority to vacate the dismissal in the interest of justice, have been examined and found to be unpersuasive.

Pritzker, J.P., Ceresia, Powers and Corcoran, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court