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Tips on Using a Settlement Conference RJI to Show CPLR 3215(c) Compliance in New York Foreclosure Actions

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In New York civil actions, where a defendant fails to answer the complaint, the next step is usually a motion for a default judgment pursuant to CPLR 3215. However, in residential mortgage foreclosure actions, the plaintiff is generally required to file a Request for Judicial Intervention ("RJI") to seek the scheduling of a settlement conference pursuant to CPLR 3408.

In this blog post, we discuss recent decisions from New York's Second Department and explore how filing a settlement conference RJI can be instrumental in showing compliance with CPLR 3215(c).

Understanding CPLR 3215(c) and the RJI

CPLR 3215(c) states that if a plaintiff fails to take proceedings for the entry of judgment within one year after the defendant's default, the court shall dismiss the complaint as abandoned unless sufficient cause is shown why the complaint should not be dismissed. It is not necessary for a plaintiff to actually obtain a default judgment within one year of the default. Rather, the plaintiff must demonstrate that proceedings are being taken that manifest an intent not to abandon the case.

The RJI is a formal request to the court to intervene in a case, such as to set a preliminary conference date or return date on a filed motion. Typically, however, plaintiffs in residential mortgage foreclosure actions file the RJI to ask the court to schedule a settlement conference pursuant to CPLR 3408.

Prior Case Law

In *Citimortgage, Inc. v Zaibak*, the Second Department held that filing an RJI seeking a settlement conference pursuant to CPLR 3408 is a "necessary prerequisite" to obtaining a default judgment.[1] The *Zaibak* court concluded that the RJI, therefore, constitutes "proceedings for entry of judgment" within the meaning of CPLR 3215(c).[2]

Since then, the *Zaibak* ruling has been questioned at times, including in a footnote on dissent in *Citibank, N.A. v. Kerszko*, which described *Zaibak* as "drift[ing] away" from the court's jurisprudence on CPLR 3215(c).[3] Another trial court judge has described *Zaibak* as an "outlier."[4]

Recent Second Department Decisions

Over the past year, the Second Department has issued at least two decisions relying on *Zaibak* and seemingly bringing it back into favor:

1. ***US Bank N.A. v Jerriho-Cadogan***: [5]
   - In this case, the foreclosing plaintiff filed an RJI seeking a settlement conference within one year of the defendants' default. The Second Department reversed the lower court's dismissal of the complaint as abandoned under CPLR 3215(c), stating that the RJI constituted proceedings toward the entry of judgment.
2. ***S. Bank N.A. v. 63 Holiday Drive Realty Corp.***: [6]
   - In this case, the foreclosing plaintiff filed an RJI requesting a settlement conference within one year of the defendant's default. The Second Department affirmed the denial of the defendant's motion to dismiss the complaint as abandoned under CPLR 3215(c), noting that the plaintiff reasonably believed a settlement conference to be required and that filing the RJI demonstrated the plaintiff's intent to pursue the case.

Key Takeaways

Plaintiffs in residential mortgage foreclosure actions should continue to file an RJI for a settlement conference under CPLR 3408, as appropriate, and should be sure to cite the cases above if challenged with a motion to dismiss under CPLR 3215(c). We will continue to monitor the case law and report on significant developments.

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[1] 188 AD3d 982, 983 [2d Dept 2020].

[2] *See id.*, citing *U.S. Bank, N.A. v Duran*, 174 AD3d 768 [2d Dept 2019].

[3] 203 AD3d 42 [2d Dept 2022].

[4] *Deutsche Bank v Claxton*, 2023 N.Y. Misc. LEXIS 1929 [Sup Ct, Kings County Feb. 14, 2023].

[5] 224 AD3d 788 [2d Dept 2024].

[6] 2024 NY Slip Op 04277, 2024 N.Y. App. Div. LEXIS 4428 [2d Dept Aug. 21, 2024].

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