

**415 E. 12th St. Hous. Dev. Fund Corp. v Estate of
Burga**

2019 NY Slip Op 33505(U)

November 26, 2019

Supreme Court, New York County

Docket Number: 651626/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official
publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 651626/2019

415 EAST 12TH STREET HOUSING DEVELOPMENT
FUND CORPORATION,

Plaintiff,

MOTION SEQ. NO. 002

- v -

ESTATE OF JOSE BURGA, BY JOHN A. ESTRADA AS
PRELIMINARY EXECUTOR OF THE ESTATE OF JOSE
BURGA,

Defendant.

**DECISION, ORDER AND
JUDGMENT**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22,
23, 24, 25

were read on this motion to/for

JUDGMENT – DEFAULT

In this action seeking, inter alia, ejectment and declaratory relief, plaintiff 415 East 12th Street Housing Development Fund Corporation (“HDFC”) moves, pursuant to CPLR 3215, for a default judgment against defendant Estate of Jose Burga, by John Estrada as Preliminary Executor of the Estate of Jose Burga. After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is decided as follows.

The facts of this case are set forth in detail in the decision and order of this Court dated September 6, 2019 and entered September 9, 2019 (“the prior order”), which denied HDFC’s unopposed motion for a default judgment with leave to renew upon proper papers. Doc. 17. Any additional relevant facts are set forth below.

In its prior order, this Court reasoned that it was constrained to deny plaintiff’s motion for a default on the grounds that: 1) although HDFC established proof of personal service of the

summons and complaint on Estrada, it failed to make additional service of the summons and complaint as required by CPLR 3215(g)(3)(i); 2) HDFC failed to establish the facts constituting the claim; 3) HDFC failed to provide affidavits of service for the notice of default and notice of termination; and 4) HDFC failed to establish that Estrada was served with the motion at his last-known address.

HDFC now renews its request for a default judgment against Estrada. In support of the motion, it submits, inter alia, an attorney affirmation, a supplemental affidavit by HDFC's president, and affidavits of service which, along with documents efiled but not annexed as exhibits to the prior motion, warrant the granting of the application.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff 415 East 12th Street Housing Development Fund Corporation for a default judgment against defendant Estate of Jose Burga, by John Estrada as Preliminary Executor of the Estate of Jose Burga, is granted; and it is further

ADJUDGED AND DECLARED that defendant Estate of Jose Burga, by John Estrada as Preliminary Executor of the Estate of Jose Burga, has no interest in the proprietary lease and share certificates for Apartment 6 located at 415 East 12th Street, New York, New York 10009; and it is further

ORDERED that plaintiff 415 East 12th Street Housing Development Fund Corporation is awarded a final judgment of possession for Apartment 6 as against defendant Estate of Jose Burga, by John Estrada as Preliminary Executor of the Estate of Jose Burga; and it is further

ORDERED that plaintiff 415 East 12th Street Housing Development Fund Corporation is awarded a final judgment of ejectment for Apartment 6 as against defendant Estate of Jose Burga, by John Estrada as Preliminary Executor of the Estate of Jose Burga; and it is further

ORDERED that a writ of assistance to the Sheriff of New York County shall issue, allowing the Sheriff to eject defendant Estate of Jose Burga, by John Estrada as Preliminary Executor of the Estate of Jose Burga, or anyone residing at the premises pursuant to rights allegedly derived from Burga or Estrada, from the subject apartment forthwith; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order, with notice of entry upon defendant Estate of Jose Burga, by John Estrada as Preliminary Executor of the Estate of Jose Burga, by certified mail, return receipt requested, as well as on the County Clerk (60 Center Street, Room 141B) and the Clerk of the General Clerk's Office (60 Center Street, Room 119); and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases [accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh); and it is further

ORDERED that this constitutes the decision, order and judgment of the court.

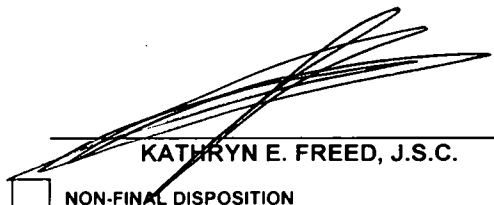
11/26/2019
DATE

CHECK ONE: CASE DISPOSED DENIED

APPLICATION: GRANTED

CHECK IF APPROPRIATE: SETTLE ORDER NON-FINAL DISPOSITION GRANTED IN PART OTHER

INCLUDES TRANSFER/REASSIGN SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE


KATHRYN E. FREED, J.S.C.