

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2022-08-16

### Housing Rights Initiative, Inc. v. Century 21 Dawns Realty

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"Housing Rights Initiative, Inc. v. Century 21 Dawns Realty" (2022). *All Decisions*. 561.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/561](https://ir.lawnet.fordham.edu/housing_court_all/561)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

**Housing Rights Initiative, Inc. v Century 21 Dawns Realty**

2022 NY Slip Op 32758(U)

August 16, 2022

Supreme Court, New York County

Docket Number: Index No. 156195/2021

Judge: William Perry

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

HOUSING RIGHTS INITIATIVE, INC.,
Plaintiff,

INDEX NO. 156195/2021
MOTION DATE 06/24/2022
MOTION SEQ. NO. 001 002 003

- v -

CENTURY 21 DAWNS REALTY, LILIANA MARQUEZ,
KELLER WILLIAMS REALTY, DANIELLE DEMATTEO, 819
TUCKAHOE ROAD CORP., PARK STERLING REALTY,
THOMAS BIMONTE, 1 BRONXVILLE OWNERS CORP,
LIBRETT REAL ESTATE GROUP, KATIA URRICO,
EASTCHESTER ESTATES CORPORATION, EXIT REALTY
GROUP, KORAB KRASNIQI, ISA MUSA, DRITA MUSA,
KRESHNIK MUSA, ARA 1 REALTY GROUP LLC,AMIR
KALAIR, RAJAZMIR ASGHAR, JGERENA REAL ESTATE
GROUP LLC,LUIS ARIAS, LUCILLE ESPOSITO REALTY
LLC,JOE PAVONE, ALL WESTCHESTER REALTY,
INC.,MARIA MILIO, CHRISTIE REALTY, LLC,MICHAEL
MORLEY, RNS REALTY CORP., MATHEW
ATHIMATTAHIL, GENNARO SANTELLA, 21 PORTLAND
PLACE LLC,ROGER GUEVARA, RAQUEL SOTO, PETER
KHAMASHTA, NAJWA KHAMASHTA, SHAHIDUL
HOSSAIN

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 44, 45, 46, 47, 51

were read on this motion to/for EXTEND - TIME

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 52, 53, 55, 56

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff Housing Rights Initiative Inc. brings this action against Defendants<sup>1</sup> for housing discrimination, in violation of a provision of the New York State Human Rights Law (“HRL”), codified at New York Executive Law § 296[5][a][1], by allegedly refusing to accept Section 8 Housing Choice Vouchers as a “lawful source of income.”

In motion sequence 001, Plaintiff moves, pursuant to CPLR 306-b, for an extension of time to serve Defendants Isa Musa, Drita Musa, Kreshnik Musa, Luis Arias, and Shahidul Hossain, and, pursuant to CPLR 308[5], for an order directing alternate service by publication. (NYSCEF Doc No. 40, Ms001 Memo.) Motion sequence 001 is submitted unopposed.

In motion sequence 002, Defendants Peter and Najwa Khamashta move to dismiss the Complaint, pursuant to CPLR 3211[a][1], [3], and/or [7], or in the alternative, for a change of venue to Westchester County. (NYSCEF Doc No. 22, Ms002 Memo.) The motion is fully submitted.

In motion sequence 003, which is unopposed, Plaintiff moves for default judgment against Defendants RNS Realty, Mathew Athimattahil, Jgerena Real Estate Group, LLC, Eastchester Estates Corporation, 819 Tuckahoe Road Corporation, 21 Portland Place LLC, Gennaro Santello, and Roger Guevara. The motions are consolidated for disposition.

### **Background**

As detailed in the Complaint, Plaintiff, a “national nonprofit housing watchdog group,” alleges that between December 2020 through February 2021, employees of Plaintiff contacted Defendants to inquire about 17 apartment listings while posing as prospective tenants. (NYSCEF Doc No. 1, Complaint, at ¶¶ 8, 39-58.) It appears that Plaintiff found the listings on Trulia.com and that the apartments are unrelated to each other, as they are each owned and managed by various

---

<sup>1</sup> The action has been discontinued against Defendants 1 Bronxville Owners Corp. (NYSCEF Doc No. 18) and Lucille Esposito Realty LLC and Joe Pavone (NYSCEF Doc No. 50).

Defendants and sporadically located throughout New York State, in Yonkers, Bronxville, and Mount Vernon.

Plaintiff alleges that its employees, who are referred to as “testers posing as prospective tenants,” called the telephone numbers provided on the Trulia.com listing pages and inquired about using Section 8 Housing Choice Vouchers as payment, but that each Defendant, for various reasons, revealed “policies or practices of refusing to accept [the] vouchers[.]” (*Id.* at ¶ 10.) The refusals to accept the vouchers were allegedly expressed orally, via telephone (*id.* at ¶¶ 39, 40, 42-52, 53-55), although two were via text message (*id.* at ¶¶ 41, 52), and one refusal (“no programs”) was allegedly posted on the Trulia.com listing page by Jgerena Real Estate Group, who never responded to Plaintiff’s telephone inquiry. (*Id.* at ¶ 46)

There are four categories of Defendants:

1. corporate real estate owners,
  - 819 Tuckahoe Road Corp., Eastchester Estates Corp., RNS Realty Corp., and 21 Portland Place LLC,
2. individual real estate owners,
  - Isa Musa, Drita Musa, Kreshnik Musa, Peter Khamashta, Najwa Khamashta, and Shahidul Hossain,
3. real estate agencies,
  - Century 21 Dawn’s Gold Realty, Keller Williams Realty, Park Sterling Realty, Librett Real Estate Group, EXIT Realty Group, ARA 1 Realty Group LLC, Jgerena Real Estate Group LLC, All Westchester Realty, Inc., Christie Realty LLC,

4. and the individual employees thereof
- Liliana Marquez, Danielle Dematteo, Thomas Bimonte, Katia Urrico, Korab Krasniqi, Amir Kalair, Rajazamir Asghar, Luis Arias, Maria Milio, Michael Morley, Mathew Athimattathil, Gennaro Santella, Roger Guevara, and Raquel Soto.

### Motion sequence 001

Plaintiff argues that it is entitled to an extension of time to serve Isa Musa, Drita Musa, Kreshnik Musa, Luis Arias, and Shahidul Hossain, the (“Ms001 Defendants”) and for an order directing service by alternate means, i.e., by publication, pursuant to CPLR 316[a].

Extensions of time within which plaintiffs may effect service of process is governed by CPLR 306-b, which provides two separate standards by which to measure an application for an extension: extension may be warranted “upon good cause shown”, or “in the interest of justice.” (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 102 [2001], *citing* CPLR 306-b.) To demonstrate “good cause” for an extension of time, a plaintiff must show that he exercised reasonable diligence in attempting to effect service. (*See, e.g., Holbeck v Sosa-Berrios*, 161 AD3d 957, 958 [2d Dept 2018] [finding plaintiff’s resort to nail-and-mail service after only two attempts to deliver the summons and complaint to plaintiff on weekdays, at approximately the same time of day, when the defendant reasonably could have been expected to be at work, and in the absence of any effort to verify defendant’s address, was insufficient to establish “good cause”] [citations omitted].)

### *Musa Defendants*

Plaintiff alleges that it attempted service on the three Musa Defendants on July 13, 2021 via first class mail, pursuant to CPLR 312-a, but that the acknowledgement forms were marked

return to sender. (NYSCEF Doc No. 40, Ms001 Memo at ¶¶ 5-8; NYSCEF Doc No. 41, Musa Envelopes.) The three envelopes each bear the address “3525 Bainbridge Avenue, Bronx NY 10467.” (*Id.*) Plaintiff alleges that it “confirmed with Google and the Real Property Tax Assessor Record that the address on the envelope was the Defendants’ address.” (Ms001 Memo at ¶ 7.)

Plaintiff alleges that it then it hired a process server. The process server’s affidavits indicate that they were unable to effect service upon the Defendants at “3525 Bainbridge Avenue, Apt. S, Bronx, NY 10467” because “the apartment listings only go up to D.” (NYSCEF Doc No. 42.)

The court, in its discretion, denies the motion to extend the time to serve the Musa Defendants. First, Plaintiff fails to show that it strictly complied with the provisions of CPLR 312-a, which requires that a mailing include “a copy of the summons and complaint . . . , together with two copies of a statement of service by mail and acknowledgement of receipt . . . with a return envelope, postage prepaid, addressed to the sender.” Here, Plaintiff states that each of its’ mailings contained only “a copy of the summons and complaint, Notice of Electronic Filing, and a Statement of Service by Mail and Acknowledgment of Receipt by Mail of Summons and Complaint.” (Ms001 Memo at ¶¶ 5; *Nagy v John Heuss House Drop In Shelter for the Homeless*, 198 AD2d 115, 115-16 [1st Dept 1993] [service pursuant to CPLR 312-a ineffective where plaintiff failed “to enclose requisite statements of service, an acknowledgement for defendant’s subscription and a stamped return envelope”].)

Secondly, the process server’s affidavit indicates that on September 8, 2021, he realized that there was no “Apartment S” at the building. (NYSCEF Doc No. 42.) The affidavit then indicates that the process server inexplicably attempted service at the same nonexistent

“Apartment S” merely days later, on September 22, 2021. On this record, the court finds that Plaintiff fails to demonstrate good cause for an extension of time under CPLR 306-b.

*Luis Arias*

Similarly, Plaintiff alleges that it attempted service on Luis Arias on July 13, 2021 via first class mail, pursuant to CPLR 312-a, but that the acknowledgement forms were never returned. (Ms001 Memo at ¶¶ 9-10.) Plaintiff alleges that it addressed this service to the corporate address of Defendant Jgerena Real Estate Group, of which Arias is allegedly an employee, although Jgerena was itself served via service upon the Secretary of State. (*Id.* at ¶ 11.) Plaintiff submits a webpage of the New York Department of State, Division of Corporations indicating that Jgerena Real Estate Group lists “Jenet Gerena, 1142 Castle Hill Avenue, Suite A, Bronx, NY” as the address for which service of process should be made. (NYSCEF Doc No. 43.) Plaintiff also submits a webpage screenshot from eAccessNY which indicates that Arias is a salesperson employed by Jgerena Real Estate Group, with a business address of 2707 Lurting Avenue, Bronx, NY. (NYSCEF Doc No. 44.)

Plaintiff alleges that after it failed to receive an acknowledgement of service from Arias, it hired a process server. The process server’s affidavit indicates that they attempted to serve Arias at the 1142 Castle Hill Avenue, Bronx, NY address on September 8, 2021 and September 22, 2021, but that a neighbor informed him on his first attempt that the “recipient is no longer open for business” and that “the business was closed” on their second attempt. (NYSCEF Doc No. 45.) A separate affidavit indicates that a third attempt was made on October 14, 2021 at the 2707 Lurting Avenue, Bronx, NY address, but that the process server was “told there is no person with the recipient’s name at this address.” (*Id.* at 3.)



The court, in its discretion, denies the motion to extend the time to serve Arias. First, Plaintiff fails to show that it strictly complied with the provisions of CPLR 312-a, which requires that a mailing include “a copy of the summons and complaint ..., together with two copies of a statement of service by mail and acknowledgement of receipt ... with a return envelope, postage prepaid, addressed to the sender.” Here, Plaintiff states that its’ mailings contained only “a copy of the summons and complaint, Notice of Electronic Filing, and a Statement of Service by Mail and Acknowledgment of Receipt by Mail of Summons and Complaint.” (Ms001 Memo at ¶ 9; *Nagy*, 198 AD2d at 115-16.)

Secondly, the process server’s affidavit indicates that he attempted service at 1142 Castle Hill Avenue, Bronx, NY, the alleged business address of Jgerena Real Estate Group, although the webpage submitted by Plaintiff in support of this proposition states that service of process may be made upon Jgerena by serving “Jenet Gerena” at “1142 Castle Hill Avenue, *Suite A*.” (NYSCEF Doc No. 43 [emphasis added].) There is no indication that the process server attempted service at “Suite A”. (NYSCEF Doc No. 45.)

Further, the affidavit states that a neighbor informed them that “the recipient is no longer open for business”, although the “recipient” is stated to be Arias in his personal capacity, rather than Jgerena. Finally, there is an affidavit memorializing one attempt of serving Arias at 2707 Lurting Avenue, Bronx, NY, on October 14, 2021, but the process server “was told” by an unspecified party that “there is no person with the recipient’s name at this address.” On this record, the court finds that Plaintiff fails to demonstrate good cause for an extension of time under CPLR 306-b.

*Shahidul Hossain*

Finally, Plaintiff likewise alleges that it attempted service on Hossain on July 13, 2021 via first class mail, pursuant to CPLR 312-a, but that the acknowledgement forms were never returned. (Ms001 Memo at ¶¶ 13-14.) Although Plaintiff does not submit the envelope addressed to Hossain, it alleges that after the envelope was returned to it, it hired a process server. The process server affidavit indicates that he attempted to effect service upon Hossain at 3560 Rochambeau Avenue, Unit 3F, Bronx, NY 10467 on September 8, 2021 and September 22, 2021, but that he never received a response. (NYSCEF Doc No. 46.)

The court, in its discretion, denies the motion to extend Plaintiff's time to serve Hossain. First, Plaintiff fails to show that it strictly complied with the provisions of CPLR 312-a, which requires that a mailing include "a copy of the summons and complaint ..., together with two copies of a statement of service by mail and acknowledgement of receipt ... with a return envelope, postage prepaid, addressed to the sender." Here, Plaintiff states that its' mailings contained only "a copy of the summons and complaint, Notice of Electronic Filing, and a Statement of Service by Mail and Acknowledgment of Receipt by Mail of Summons and Complaint." (Ms001 Memo at ¶ 13; *Nagy*, 198 AD2d at 115-16.)

Secondly, the process server's affidavit indicates that he attempted service at 3560 Rochambeau Avenue, Unit 3F, Bronx, NY, on two occasions, September 8, 2021 at 9:13 am and September 22, 2021 at 11:00 am. (NYSCEF Doc No. 46.) However, these two attempts both fell on weekdays at times "when the defendant reasonably could have been expected to be at work, and in the absence of any effort to verify defendant's address," are insufficient to establish good cause. (*Holbeck*, 161 AD3d at 958.)

The court likewise finds that the extension of time is unwarranted under CPLR 306-b's separate "interest of justice" prong, as Plaintiff has failed to show both reasonable diligence, and, as explained below, a meritorious cause of action. (*Leader*, 97 NY at 106.)

Finally, Plaintiff fails to demonstrate that "service upon [any of these Defendants] pursuant to CPLR 308(1), (2) or (4) would be impracticable in this case" such that service via publication is warranted. (*Esposito v Ruggerio*, 193 AD2d 713, 713 [2d Dept 1993]; *Fidelity Nat. Title Ins. Co. v Smith*, 2015 WL 9851735, at \*2 [Sup Ct, NY County 2015] ["service by publication is permitted by CPLR 308(5), which allows courts to direct an alternative method for service of process where the methods set forth in CPLR 308(1) (personal service), CPLR 308(2) (substituted service), and CPLR 308(4) (nail and mail service) are impracticable"].) "Service by publication is the method of notice least calculated to bring to a potential defendant's attention the pendency of judicial proceedings." (*Contimortgage Corp. v Isler*, 48 AD3d 732, 734, [2d Dept 2008].)

### **Motion sequence 002**

Peter and Najwa Khamashta (the "Ms002 Defendants") argue that Plaintiff lacks standing to bring this suit because it has not suffered a harm, that the property owned by Najwa Khamashta (a two-unit apartment located at 24 Tunis Avenue #1, Bronxville, NY 10708) is not subject to the New York HRL, that Peter Khamashta is not a part owner thereof, and that Plaintiff has failed to establish that the purported renter was qualified to rent the apartment or that they were rejected from such due to their reliance on the Section 8 voucher. (Ms002 Memo at ¶¶ 4-28.) In the alternative, the Ms002 Defendants argue that a transfer of venue to Westchester County is warranted because the apartment at issue is located there. (*Id.* at ¶¶ 29-32.)

In opposition, Plaintiff argues that it is a proper party to commence this action because it is a non-profit organization that has "expended resources employing and training staff to conduct

civil rights testing in order to ensure that housing providers ... comply with fair housing laws.” (NYSCEF Doc No. 53, Ms002 Opp., at ¶¶ 29-31, citing *Mixon v Grinker*, 556 NYS2d 855, 857 [1st Dept 1990].)

“On a defendant's motion to dismiss the complaint based upon the plaintiff's alleged lack of standing, the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law.” (*New York Community Bank v McClendon*, 138 AD3d 805, 806 [2d Dept 2016]; see CPLR 3211[a][3].) “To defeat a defendant's motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the plaintiff's submissions raise a question of fact as to its standing.” (*Deutsche Bank Trust Co. Americas v Vitellas*, 131 AD3d 52, 60 [2d Dept 2015].)

As relevant here, New York Executive Law § 296[5][a][1] provides that:

“[i]t shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation ... or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the ... lawful source of income ... of such person or persons[.]”

Further, “lawful source of income” is defined to include “local public assistance or housing assistance including, but not limited to, section 8 vouchers[.]” (New York HRL § 292[36].)

The court finds that the Ms002 Defendants have met their burden and that Plaintiff's submissions fail to raise a question of fact regarding its standing. As stated by the Appellate Division, First Department, the “expansive language” in HRL § 296[a][5] “provides a remedy for any person adversely affected by reason of discrimination in the provision of housing in New York.” (*Stalker v Stewart Tenants Corp.*, 93 AD3d 550, 551 [1st Dept 2012], quoting *Axelrod v 400 Owners Corp.*, 189 Misc2d 461, 465-66 [Sup Ct, NY County 2001].) Plaintiff's argument in

opposition is that standing is conferred upon it because it has suffered an “injury in fact,” i.e., it had to expend resources to employ and train its employee who posed as a prospective tenant. (Opposition at ¶¶ 28-32.) However, that injury is unrelated to any actual “discrimination in the provision of housing in New York,” as it does not arise from the actual discrimination itself. (*Compare with Stalker*, 93 AD3d at 550 [finding that plaintiffs set forth a cause of action under Exec. Law § 296(5) by alleging injury caused by defendants’ rescission of sale contract due to plaintiff’s age]; *Axelrod*, 189 Misc2d at 465 [finding that plaintiff set forth a cause of action by alleging defendant co-op board injured her by failing to approve sale of condo to prospective buyers because they were of “childbearing age”].) Plaintiff fails to cite to any authority wherein a non-profit was found to have capacity to set forth claims under Exec. Law § 296[a][5], and the relevant caselaw examined by the court concerns individual plaintiffs who set forth discriminatory claims against actual or prospective landlords.

*Mixon*, relied upon by Plaintiff to argue that it has suffered an adequate injury to confer standing, is readily distinguishable, as the plaintiff in that case, the Coalition for the Homeless, was an organization which represented “individuals who [were] unable to seek a judicial remedy on their own behalf[.]” (*Mixon*, 157 AD2d at 427.) Here, there is no allegation by Plaintiff that it represents such individuals who are unable to use their Section 8 housing vouchers, and, moreover, Plaintiff fails to submit evidence sufficient to raise an issue of fact. (*Deutsche Bank Trust Co. Americas*, 131 AD3d at 60.)

### **Motion sequence 003**

In motion sequence 003, Plaintiff moves for default judgment against Defendants RNS Realty, Mathew Athimattahil, Jgerena Real Estate Group, LLC, Eastchester Estates Corporation,

819 Tuckahoe Road Corporation, 21 Portland Place LLC, Gennaro Santello, and Roger Guevara. (NYSCEF Doc No. 85, Ms003 Memo.)

On a motion for leave to enter a default judgment, a plaintiff is required to submit: (1) proof of service of the summons and complaint on the defendant; (2) proof of the merits of the subject claims; and (3) proof of the defendant's default in answering or appearing. (*SMROF II 2012-I Tr. v Tella*, 139 AD3d 599 [1st Dept 2016].) “Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists.” (*Bianchi v Empire City Subway Co.*, 2016 WL 1083912 [Sup Ct, NY County 2016], quoting *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003].)

Here, Plaintiff alleges that service upon each of the Ms003 Defendants was proper; with the five corporate Defendants being served pursuant to Business Corporation Law § 306 and the three individual Defendants being served pursuant to CPLR 312-a or CPLR 308. (Ms003 Memo at 4-5.) Plaintiff further alleges that it properly complied with CPLR 3215[g] by mailing additional copies of the summons and complaint. (*Id.*) To date, Mathew Athimattahil is the only Ms003 Defendant to have appeared, having filed an acknowledgement of service (NYSCEF Doc No. 71) and a request for an adjournment on July 22, 2022. (NYSCEF Doc No. 94.)

While a defendant in default is deemed to have admitted all traversable allegations in the complaint (*see Woodson*, 100 NY2d at 70; *Brown v Rosedale Nurseries, Inc.*, 259 AD2d 256 [1st Dept 1999]), “CPLR § 3215 does not contemplate that default judgments are to be rubberstamped once jurisdiction and a failure to appear has been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action.” (*Feffer v Malpeso*, 210 AD2d 60, 60 [1st Dept 1994].) As such, a movant must submit an affidavit of the facts that does more than just make conclusory allegations (*Peacock v Kalikow*, 239 AD2d 188, 190 [1st Dept 1997]), it must state sufficient factual allegations to enable the Court to determine that a viable cause of action exists (*Woodson*, supra at 70-72).

(*Hall v Holland Contracting Corp.*, 2011 WL 11061091, at \* 1 [Sup Ct, Bronx County 2011].)

Plaintiff's motion for default judgment is denied for insufficient proof of liability as to the prima facie validity of the causes of action set forth in the Complaint. As discussed above, the allegations in the Complaint fail to give rise to a cause of action for discrimination because Plaintiff was not actually "adversely affected" by the alleged discrimination. (*Stalker*, 93 AD3d at 551; Exec. Law § 297 ["Procedure"] [giving a private right of action to any "person claiming to be aggrieved by an unlawful discriminatory practice"].) Plaintiff further fails to set forth sufficient evidence demonstrating that the alleged discriminatory statements were made. As such, it is hereby

ORDERED that Plaintiff's motion sequence 001 for an extension of time to serve and directing service by publication upon Defendants Isa Musa, Drita Musa, Kreshnik Musa, Luis Arias, and Shahidul Hossain is denied; and it is further

ORDERED that motion sequence 002 to dismiss the complaint against Defendants Peter and Najwa Khamashta is granted, with costs and disbursements to said Defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said Defendants; and it is further

ORDERED that the action is severed and continued against the remaining Defendants; and it is further


ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General

Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that Plaintiff’s motion sequence 003 for default judgment against Defendants RNS Realty, Mathew Athimattahil, Jgerena Real Estate Group, LLC, Eastchester Estates Corporation, 819 Tuckahoe Road Corporation, 21 Portland Place LLC, Gennaro Santello, and Roger Guevara is denied; and it is further

ORDERED that such service upon the Clerk of the Court 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](http://www.nycourts.gov/supctmanh)).

|                       |   |                                 |   |                                    |  |
|-----------------------|---|---------------------------------|---|------------------------------------|--|
| <u>8/16/2022</u>      |   |                                 |  |                                    |  |
| DATE                  |   |                                 | WILLIAM PERRY, J.S.C.   |                                    |  |
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED              | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                             | <input type="checkbox"/> OTHER     |  |
| APPLICATION:          | <input type="checkbox"/> GRANTED                    |                                 | <input checked="" type="checkbox"/> GRANTED IN PART                                   |                                    |  |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER               |                                 | <input type="checkbox"/> SUBMIT ORDER   |                                    |  |
|                       | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN |                                 | <input type="checkbox"/> FIDUCIARY APPOINTMENT  | <input type="checkbox"/> REFERENCE |  |