

**Dominguez v Gil Small Realty Corp.**

2008 NY Slip Op 32622(U)

September 23, 2008

Supreme Court, New York County

Docket Number: 0402690/2005

Judge: Judith J. Gische

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

HON. JUDITH J. GISCHE  
J.S.C.

PRESENT: \_\_\_\_\_

PART 10

Index Number : 402690/2005 *Justice*

DOMINGUEZ, ENRIQUE

vs

GIL SMALL REALTY

Sequence Number : 005

DEFAULT JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered \_\_\_\_\_ is motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**

SEP 26 2008

COUNTY CLERK'S OFFICE  
NEW YORK

*motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.*

Dated: 9/23/08

HON. JUDITH J. GISCHE *J.P.* J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----X  
ENRIQUE DOMINGUEZ, GARY DOMINGUEZ and  
KAREN DOMINGUEZ, infants by their mother and  
Natural guardian, MARIA DOMINGUEZ, and MARIA  
DOMINGUEZ, Individually,

Plaintiff,

-against-

GIL SMALL REALTY CORP., and NEW YORK CITY  
HOUSING AUTHORITY,

Defendants.

-----X  
NEW YORK CITY HOUSING AUTHORITY,

Third-Party Plaintiff,

-against-

VANDERVEER ESTATES HOLDING, VE APARTMENTS  
LLC, and PRISTINA REALTY CORP.,

Third-Party Defendants.

-----X  
Recitation, as required by CPLR 2219 [a], of the papers considered in the review of the  
(these) motion(s):

**Papers** **Numbered**  
NYCHA motion [d j/mt] w/WPP affirm in support, WPP good faith affirm, exhs . . . . . 1

-----X  
*Upon the foregoing papers, the decision and order of the court is as follows:*

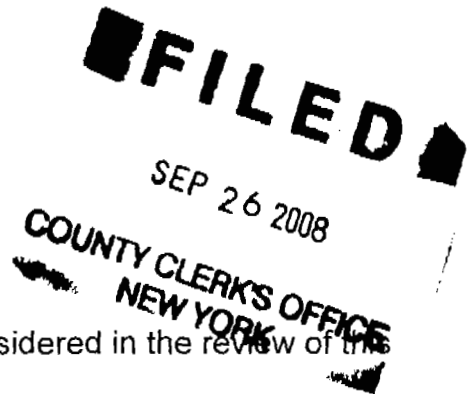
This action was brought by plaintiffs to recover based upon alleged personal injuries caused by lead poisoning. Defendant/third-party plaintiff New York City Housing Authority ("NYCHA") now moves for entry of a default judgment against third-party defendants Vanderveer Estates Holding ("Vanderveer"), VE Apartments LLC ("VE") and

**Decision/Order**

Index No.: 402690/05  
Seq. No. : 005

Present:  
Hon. Judith J. Gische  
J.S.C.

Third-Party  
Index No.: 590041/08



Pristina Realty Corp ("Pristina"). CPLR § 3215. None of the other appearing parties have taken any position with respect to the motion, although NYCHA has provided proof of service. Therefore, the motion will be considered on default.

NYCHA has demonstrated that service of the third-party complaint was made on Vanderveer, VE and Pristina by service of two copies of the same on the Office of the Secretary of State of New York. CPLR §§ 311 (a) (1); 311-a (a). Nonetheless, these defendants have have not answered the third-party complaint nor otherwise appeared in this action within the time provided under the CPLR.

In the main action, plaintiffs commenced a personal injury action alleging that on or about June 25, 2002, and for a period of time prior thereto, infant-plaintiffs Enrique Dominguez, Gary Dominguez and Karen Dominguez were caused to suffer serious injuries and lead poisoning while residing at 936 Reverend James Polite Boulevard, Bronx, New York (the "Bronx Location") and 1295 Amsterdam Avenue, New York, New York (the "Manhattan Location"). The Bronx location is owned by defendant Gil Small Realty Corp. and the Manhattan Location is owned by NYCHA.

NYCHA commenced a third-party action against Vanderveer, VE and Pristina seeking common law indemnification and contribution. NYCHA alleges that the infant-plaintiffs were residing at 1412 New York Avenue, Brooklyn, New York ("1412 New York Ave"), 1417 New York Avenue, Brooklyn New York ("1417 New York Ave.") and 2334 Hughes Avenue, Bronx, New York ("2334 Hughes Ave.") at or about the time that the infant-plaitniffs were allegedly exposed to lead. NYCHA alleges that at the time the infant-plaintiffs resided at the aforementioned addresses, Vanderveer and VE owned 1412 New York Ave and 1417 New York Ave and Pristina owned 2334 Hughes Ave.

NYCHA maintains that Vanderveer and VE received a violation from the New York City Housing Preservation Department concerning lead violations found at 1412 New York Ave and 1417 New York Ave. NYCHA also claims that Pristina received a violation from the New York City Department of Health to Abate Nuisance concerning lead paint at 2334 Hughes Ave. NYCHA has not provided any proof of the aforementioned violations.

While a default in answering the complaint constitutes an admission of the factual allegations therein, and the reasonable inferences which may be made therefrom (Rokina Optical Co., Inc. v. Camera King, Inc., 63 NY2d 728 [1984]), 301 West is only entitled to a default judgment in its favor, provided it otherwise demonstrates that it has a *prima facie* cause of action (Gagen v. Kipany Productions Ltd., 289 AD2d 844 [3d Dept 2001]).

On this motion, NYCHA has not met its burden of demonstrating *prima facie* causes of action for common law indemnification and contribution against Vanderveer, VE and Pristina. NYCHA has failed to demonstrate that lead was present at 1412 New York Ave, 1417 New York Ave and 2334 Hughes Ave in an amount sufficient to cause the infant-plaintiffs' injuries, in whole or in part, or that the infant-plaintiffs were even exposed to lead at these locations. Therefore, the motion is granted only to the extent that Vanderveer, VE and Pristina's default in appearing in this action is hereby noted. All issues of liability and damages shall be decided at inquest at the time of trial in the main action.

**Conclusion**

In accordance with this decision, it is hereby:

**ORDERED** that the motion by defendant/third-party plaintiff NYCHA for entry of a default judgment against third-party defendants Vanderveer, VE and Pristina is hereby granted to the extent that that Vanderveer, VE and Pristina's default in appearing in this action is hereby noted; and it is further

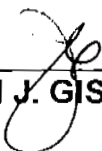
**ORDERED** that all issues of Vanderveer, Ve and Pristina's liability and NYCHA's damages shall be decided at inquest at the time of trial in the main action.

Any requested relief not expressly addressed herein has nonetheless been considered by the court and is denied.

This shall constitute the decision and order of the court.

Dated: New York, New York  
September 23, 2008

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**  
SEP 26 2008  
COUNTY CLERK'S OFFICE  
NEW YORK