

**Davidson Ave. SIP HDFC v Castro**

2011 NY Slip Op 30194(U)

January 21, 2011

Civ Ct, Bronx County

Docket Number: 63421/09

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK  
 COUNTY OF BRONX: HOUSING PART B

\_\_\_\_\_  
 DAVIDSON AVENUE SIP HDFC,

X

Petitioner-Landlord

-against-

DECISION & ORDER  
 Index No.: L&T 63421/09

HON. SABRINA B. KRAUS

DORKA CASTRO  
 1789 DAVIDSON AVENUE - APT 6B  
 BRONX, NEW YORK 10453

Respondent-Tenant

\_\_\_\_\_  
 X

**BACKGROUND**

This summary nonpayment proceeding was commenced by **DAVIDSON AVENUE SIP HDFC** (Petitioner) and seeks to recover possession of **Apartment 6B at 1789 DAVIDSON AVENUE, BRONX, NEW YORK 10453** (Subject Premises) based on allegations that **DORKA CASTRO**, the rent-stabilized tenant of record for the Subject Premises had failed to pay rent due.

The petition in this proceeding is dated November 3, 2009, and is verified by Petitioner's counsel. The petition alleges that rent was personally demanded from the Respondent since it became due, and that Respondent owed \$12,417.91 for arrears through November 2009.

Respondent did not file an answer to the petition and on or about December 2009, Petitioner applied for a default judgment against Respondent. The initial default application was denied by Judge Alterman on or about December 7, 2009. On or about May 6, 2010

Petitioner successfully renewed its application, and the warrant of eviction issued on May 10, 2010.

Steven Goldenberg, an agent for Petitioner, submitted affidavits of investigation in support of both default applications. Mr. Goldenberg submitted two affidavits of investigation regarding the military status of Dorka Castro. Mr. Goldenberg executed sworn statements which asserted that on November 12, 2009 and on April 8<sup>th</sup>, 2010 “... I called at premise no. 1789 Davidson Avenue, Bronx, New York, 10453, Apt. 6B and had a conversation with Dorka Castro. I asked the person spoken to whether said tenant or anybody else residing in said premises was in the military service of the United States or the State of New York in any capacity. The person informed me that said tenant was not in the military service, nor was the Respondent or the Tenant or anyone in said Respondent’s or Tenant’s family dependant on any person in the military service of the United States or any nation allied with the United States.”

Directly below Mr. Goldenberg’s notarized signature and above the accompanying affirmation of Petitioner’s counsel, the documents further provide:

**IMPORTANT NOTE:** providing false information in an affidavit of military status is a violation of federal and state penal laws which can result in criminal prosecution, as well as civil liabilities.

On or about May 28, 2010, Pedro Garcia applied via order to show cause, for a stay on the execution of the warrant. In support of his *ex parte* application, Mr. Garcia stated on the record that he was the Respondent’s common law husband, and that Respondent was in Santo Domingo, caring for her father, who was dying of cancer. Mr. Garcia stated that Ms. Castro had been away for the past eighteen months. In response to the Court’s inquiry, Mr. Garcia stated on the record that the affidavits regarding the non military investigation were false, as Respondent

had been in Santo Domingo on the dates alleged, and asserted, for the same reason, that no personal rent demand had ever been made.

The Court granted Mr. Garcia's *ex parte* application, issued a stay and directed Petitioner to file written opposition addressing these issues. The opposition was to include an affidavit from Steve Goldenberg.

On the return date, the opposition papers submitted by Petitioner failed to address the issues of the oral rent demand and non-military affidavits. Mr. Garcia and Petitioner's counsel entered into a stipulation resolving the issues of rent arrears. Mr. Garcia was added as a party to the proceeding, and consented to a judgment for arrears. Mr. Garcia waived any defects regarding the rent demand. The parties agreed on a payment schedule, and the balance of the motion, concerning the issues on which the Court had directed opposition be filed were adjourned to July 16, 2010, for the Petitioner to have an additional opportunity to comply with the Court's order and submit opposition papers on point. Respondent was advised that his appearance on July 16, was not required and that the date was for the submission of papers only.

On July 16, 2010, the file was inadvertently marked "motion denied no appearance movant" by the clerk, and never presented to the Judge. However, Petitioner did comply with the Court's order to file opposition papers by said date.<sup>1</sup>

The papers filed by Petitioner included an affidavit from Steven Goldenberg. Mr. Goldenberg stated that he really didn't read the affidavits of investigation that he signed, that he only filled in some blanks. Mr. Goldenberg stated that he thought the affidavits were "no big

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<sup>1</sup> The matter escaped the Court's attention, until late September 2010, when Petitioner renewed its request for entry of a default judgment as to Respondent, and the Court discovered the clerk's error of July 16, 2010.

deal” and that all that was required was that he ask around his office, as to whether the tenant was known to be in the military.

The following excerpts are taken from the affidavit in opposition submitted by Mr. Goldenberg:

My attorney gave me an Affidavit of Investigation with some blank spaces on it. Furthermore, my attorney advised me to inquire into the military status of the respondent so that I would be able to answer whether or not the Respondent is in the military or dependent upon anyone in the military.

I am not an attorney and was never given specific training on how to perform such an inquiry. Since I have been working here, I have on occasion, previously performed similar inquiries. Apparently from the first time I started doing such inquiries, I fell into a very bad habit.

**Each time**, what I have been accustomed(sic) to doing is to ask those people whom I work with what they know about the tenants. Although we are a not-for-profit housing company, we do have quite a few employees who have regular contact with the tenants ....

I had no idea that I had to personally be the one who speaks to the tenants.

I just thought since we all work together then it wouldn't matter if I ask my coworkers ...

It seemed to be an effective and efficient manner to find out whether or not the tenants were in the military or dependent upon someone who is. In fact I remember being told early in my employment (by whom I do not recall), that almost none of our tenants are in the military so these sorts of investigations were supposed to be quick and simple

.....

I never really understood the exact details of what I had signed...

Had I realized, had anyone ever explained to me the true meaning and tremendous gravity of the document involved, I most certainly would not have continued to act as I had.

(Above excerpts taken from July 14<sup>th</sup>, 2010 affidavit of Steve Goldenberg, emphasis added).

§ 521(b) of the Service members Civil Relief Act provides that in applicable any action or proceeding before entry of a default judgment the Plaintiff or Petitioner shall file an affidavit

with the court stating whether the party sued is in the military and showing necessary facts to support the affidavit. § 521(c) provides that a person who makes or uses an affidavit knowing it to be false may be fined, imprisoned or both.

The affidavit filed must establish that the Respondent is not in the military service, that the affidavit was done after the default occurred, and that the investigation was done recently (*NYCHA v. Smithson* 119 Misc2d 721).

Sometime after the submission of these opposition papers, Petitioner's Counsel advised the Court that Mr. Goldenberg was no longer employed by Petitioner, and that a new management company had taken over running the Subject Premises.

However, Mr. Goldenberg not only acknowledges in his affidavit that the affidavits of investigation that he filed in this proceeding were false, but in fact that this was his standard procedure for each affidavit of investigation he executed. The Court thus concludes that all other affidavits filed by Mr. Goldenberg, on identical forms provided by Petitioner's counsel, are also false. While Mr. Goldenberg states he has only executed said affidavits "on occasion," this Court believes that Mr. Goldenberg may have submitted hundreds of affidavits of investigation, and affidavits of merit, since his employment began in February 2009.<sup>2</sup>

As this Court has previously noted, where a false affidavit of non-military status is filed in connection with a landlord-tenant proceeding, the proceeding is deemed to be in violation of law (*In re Holstein* 43 AD2d 9 [2nd Dept, 1973]). The filing of a false affidavit is a criminal act (*In re Siegel* 47 AD2d 461 [1<sup>st</sup> Dept., 1975]). The act may also constitute contempt of court

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<sup>2</sup> This Court regularly reviews applications for default judgments and recalls during the course of said review seeing many affidavits of investigation executed by Mr. Goldenberg.

(*Central Budget Corp. v. Knox* 62 Misc.2d 66 ).

Based upon Counsel's representation that Mr. Goldenberg is no longer Petitioner's agent or under its control, the Court sees no point in setting the matter down for a hearing on sanctions or contempt. However, given Mr. Goldenberg's affidavit essentially admits the commission of multiple criminal acts, the matter will be referred by the Court to the appropriate body for further action.

Additionally, Petitioner's counsel is directed to provide this Court with a list within thirty days of receipt of this decision, of the Index Numbers of any proceedings where Mr. Goldenberg submitted an affidavit of investigation in support of a default judgment.<sup>3</sup> Additionally, Counsel is responsible for insuring that there are no pending proceedings where warrants of eviction were issued based on Mr. Goldenberg's affidavit of investigation, and directed to take appropriate remedial action if any such cases exist.

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<sup>3</sup> This Court had noted that Mr. Goldenberg had filed affidavits in Index Numbers 24343/09, 26948/10, 1498/10, 47634/10, and 2487/10, but believes that this is only a small percentage of the cases at issue.

This constitutes the decision and order of this Court.

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SABRINA B. KRAUS

Dated: Bronx, New York  
January 21, 2011

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