

NDB 2 - Protection LLC v Insight Global Strategy

2023 NY Slip Op 33298(U)

September 21, 2023

Supreme Court, New York County

Docket Number: Index No. 651797/2022

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

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NDB 2 - PROTECTION LLC,

Plaintiff,

- v -

INSIGHT GLOBAL STRATEGY, BRIAN NALISA, GRIFFIN
ATLAS LTD, KEVIN GRIFFIN, AMERICAN NALISA LLC,
SINVULA NALISA, and SAMUEL NALISA,

Defendants.

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INDEX NO. 651797/2022

MOTION DATE 05/25/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 20, 21, 22, 23, and 24

were read on this motion to RENEW/REARGUE/RESETTLE/RECONSIDER .

Upon the foregoing documents, it is ORDERED that the motion, which is in effect to renew plaintiff's prior motion for default judgment, is granted, on default and without opposition, for the reason set forth in the moving affirmation of Joseph H. Neiman, Esq. (NYSCEF Doc. No. 21), and the exhibits annexed thereto, in which the court concurs. The court had previously denied the motion against defendants Insight Global Strategy, Brian Nalisa, Sinvula Nalisa, and Samuel Nalisa, due to plaintiff's failure to submit proof of the additional service required by CPLR 3215(g) prior to entering a default judgment (NYSCEF Doc. No. 19). Plaintiff attaches herein an affidavit of such additional notice, dated May 2, 2023 (NYSCEF Doc. No. 23), which was meant to be included in the original motion papers but was inadvertently omitted from the filing (Neiman affirmation, NYSCEF Doc. No. 21, ¶ 6); and it is further

ORDERED that upon renewal, the court vacates its prior decision, but grants the motion for default judgment only in part. A plaintiff that seeks entry of a default judgment for a

defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). “The standard of proof is not stringent amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have 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” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, plaintiff has sufficiently established the liability of defendants Brian Nalisa and Insight Global Strategy by submission of the verified complaint (NYSCEF Doc. No. 1) and the affidavit of Brian Lipman, plaintiff’s managing member (NYSCEF Doc. No. 14), which state that defendant Brian Nalisa fraudulently induced plaintiff into ordering various items of personal protective equipment to be distributed to various healthcare providers, but that Insight Global Strategy never provided the vast majority of the equipment plaintiff ordered.

However, Lipman’s affidavit makes no mention of defendants Sinvula Nalisa and Samuel Nalisa. The sole allegation against them in the complaint is that they “have received funds, and/or comingled their funds and/or participated with defendant, Brian Nalisa in furtherance of the improper acts alleged herein” (verified complaint, NYSCEF Doc. No. 1, ¶ 31). The record does not indicate that they ever dealt with plaintiff, were parties to the agreement between plaintiff and Insight Global Strategy, or made any representations to plaintiff, rendering

insufficient plaintiff's claims for breach of contract, unjust enrichment, and fraud in the inducement (*IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142 [2009] [unjust enrichment]; *EI Entertainment U.S. LP v. Real Talk Entertainment, Inc.*, 85 AD3d 561, 562 [1st Dept 2011] [fraud]; *Harris v Seward Park Housing Corp.*, 79 AD3d 425 [1st Dept 2010] [breach of contract]). There is no allegation that these defendants are exercising dominion over funds belonging to plaintiff, as necessary for plaintiff's claim of conversion (*State v Seventh Regiment Fund, Inc.*, 98 NY2d 249, 259 [2002]). Plaintiff does not allege a confidential or fiduciary relationship necessary to support a claim for constructive trust (*Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 473 [1st Dept 2010]). Finally, New York does not recognize a separate cause of action for civil conspiracy (*Mamoon v Dot Net Inc.*, 135 AD3d 656, 658 [1st Dept 2016]).

Accordingly, the court adheres to so much of its prior decision as denied the motion for default judgment against defendants Sinvula Nalisa and Samuel Nalisa. As plaintiff does not seek to disturb so much of the prior decision as was in favor of plaintiff and against defendant American Nalisa LLC, the court will adhere to that as well; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants Brian Nalisa, Insight Global Strategy, and American Nalisa LLC, jointly and severally, in the amount of \$1,785,430, with interest thereon at the statutory rate from April 11, 2022, through entry of judgment, as calculated by the Clerk, and continuing to accrue thereafter until satisfaction of judgment, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the action is severed and continued against the remaining defendants.

This constitutes the decision and order of the court.



<u>9/21/2023</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE