

**Montgomery v Props2Fantasy.com**

2025 NY Slip Op 31797(U)

May 15, 2025

Supreme Court, New York County

Docket Number: Index No. 652809/2024

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04**

*Justice*

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DANIEL MONTGOMERY,

Plaintiff,

- v -

PROPS2FANTASY.COM, ADAM WEINSTEIN,

Defendants.

-----X

**INDEX NO. 652809/2024**

**MOTION DATE 02/17/2025**

**MOTION SEQ. NO. 001**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, plaintiff’s motion for a default judgment is granted as to his conversion claim against defendant Props2Fantasy.com and denied as to defendant Adam Weinstein.

Plaintiff alleges that on or about October 22, 2022, he registered an account on the fantasy sports website thrivefantasy.com (the “Website”), which is owned and operated by defendants (NYSCEF Doc No. 2, complaint at ¶6). In doing so, he accepted the Website’s terms of use which provided, inter alia, that he could withdraw his funds from the site “at any time and for any reason” (*id.* at ¶12). Plaintiff then “entered several contests on the Website, yielding an account balance of \$39,427.50” (*id.* at ¶7). Despite attempts to withdraw \$39,427.50 from this account on May 10, 2023, and February 23, 2024, plaintiff has been unable to do so (*id.* at ¶8). Plaintiff’s complaint asserts claims for: (1) breach of contract; (2) unjust enrichment; (3) breach of the implied covenant of good faith and fair dealing; and (4) conversion. He also seeks treble damages and attorney’s

fees pursuant to General Business Law §349. Defendants failed to answer or appear and plaintiff now moves for default judgment.

### DISCUSSION

In order to establish his entitlement to a default judgment pursuant to CPLR 3215, plaintiff must submit proof of: (1) service of the summons and complaint; (2) the facts constituting the claim; and (3) defendants' default in answering or appearing (*see Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). "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 [1st Dept 1994]). The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*id.*).

As an initial matter, the branch of plaintiff's motion seeking a default judgment as against Adam Weinstein is denied. The complaint alleges that Weinstein is the founder and Chief Executive Officer of Props2fantasy.com but lacks specific allegations of dominion, control, and wrongdoing sufficient to meet the "heavy burden" to support piercing the corporate veil to hold Weinstein personally liable for the acts of Props2Fantasy.com (*see 2497 Realty Corp. v Fuertes*, 232 AD3d 451, 452 [1st Dept 2024] [internal citations omitted]); *see also Remora Capital S.A. v Dukan*, 175 AD3d 1219, 1220 [1st Dept 2019]).

Plaintiff has, however, established his entitlement to a default judgment against Props2Fantasy.com on his conversion claim. "The tort of conversion is established when one who owns and has a right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner" (*Lewinter v Charity Beverage USA Corp.*, 2008 NY Slip Op 31554[U] [Sup Ct, NY County 2008] [internal

citations omitted]) and plaintiff has established that he has the right to possess the funds at issue and that Props2Fantasy.com remains in possession of same despite his withdrawal attempts (*see e.g. Shabtai v HFZ Capital Group, LLC*, 75 Misc 3d 1226(A) [Sup Ct, NY County 2022] [“An action for conversion requires a specific, identifiable fund and an obligation to treat it in a particular manner or otherwise return it”], *order affd, appeal dismissed*, 220 AD3d 471 [1st Dept 2023]). Plaintiff has also established that props2fantasy.com was served with process via the New York State Secretary of State per BCL §306(b) and the follow-up mailing required by CPLR 3215(g)(4) (NYSCEF Doc Nos. 3, 10) yet failed to appear.

However, treble damages and attorney’s fees under GBL §349 are not warranted here. That statute applies when a defendant “engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice” (*Koch v Acker, Merrall & Condit Co.*, 18 NY3d 940, 941 [2012] [internal citations and quotations omitted]). An act or practice is consumer-oriented when it has “a broader impact on consumers at large” (*Trump Vil. Section 4, Inc. v Lawless & Mangione Architects Engineers LLP*, 2022 NY Slip Op. 33159[U], 15-18 [Sup Ct, Kings County 2022] [internal citations and quotations omitted], *affd sub nom. Trump Vil. Section 4, Inc. v Lawless & Mangione Architects & Engineers, LLP*, 2025 NY Slip Op 01003 [2d Dept 2025]). The facts set out here do not satisfy this standard. By plaintiff’s own admission, he was informed of the Website’s terms and conditions at issue after going to the Website and beginning the sign-up process. Accordingly, the representation in the Website’s terms and conditions that customers could withdraw funds at any time was not directed at the consuming public or “made for the purpose of inducing the public at large into consuming a product or service or that the representations affected consumer decision-making” (*Simmons v Assistcare Home Health Services LLC*, 2021 NY Slip Op 32966[U], 9-11 [Sup Ct, Kings County

2021]). The fact that two other individuals have commenced separate actions against defendants based on similar facts does not bring this action within the remit of GBL §349.

The Court does not reach the remaining causes of action of the complaint.

Accordingly, it is

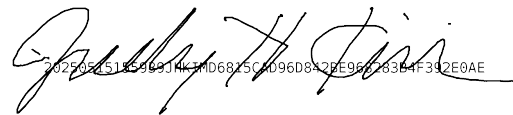
**ORDERED** that the branch of plaintiff's motion for default judgment is granted in part, to the extent that plaintiff Daniel Montgomery is granted leave to enter a default judgment as against defendant Props2Fantasy.com on his fifth cause of action, for conversion, and is denied as against defendant Adam Weinstein; and it is further,

**ORDERED** that plaintiff Daniel Montgomery is awarded a money judgment in his favor as against defendant Props2Fantasy.com in the amount of \$39,427.50, with interest at the statutory rate from May 11, 2023, as calculated by the Clerk, plus costs and disbursements to be taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

**ORDERED** that plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendants as well as the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

**ORDERED** that such service upon the Clerk of the Court 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 this court's website).

This constitutes the decision and order of the Court.



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5/15/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE