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As of: March 18, 2021 3:38 PM Z

[Foran v Computershare, Inc.](#)

Supreme Court of New York, Appellate Division, First Department

October 15, 2020, Decided

Appeal No. 12074, Case No. 2019-3790

Reporter

187 A.D.3d 538 *; 135 N.Y.S.3d 1 **; 2020 N.Y. App. Div. LEXIS 5984 ***; 2020 NY Slip Op 05809 ****; 2020 WL 6065446 the bar of the State of New Jersey, admitted pro hac vice, of counsel), for respondent.

[**1]** Marie Foran as Administrator of the Estate of Cornelius Sullivan, Plaintiff-Appellant, v Computershare, Inc., Defendant-Respondent, John Doe, Defendant.
Index No. 150159/16

Judges: Before: Renwick, J.P., Gesmer, Gonzalez, Scarpulla, JJ.

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Prior History: [Foran v. Computershare, Inc., 2019 N.Y. Misc. LEXIS 1560 \(N.Y. Sup. Ct., Apr. 3, 2019\)](#)

Core Terms

shares, social security number, properly dismiss, triable issue, third-party, unavailing, unjust

Counsel: **[***1]** Tarter Krinsky & Drogin LLP, New York (Robert G. Heim of counsel), for appellant.

Saiber LLC, Florham Park, NJ (James Henry Forte of

Opinion

[2] [*538]** Order, Supreme Court, New York County (Anthony Cannataro, J.), entered April 4, 2019, which granted defendant's motion for summary judgment dismissing the second amended complaint, unanimously affirmed, without costs.

Defendant made a prima facie showing of entitlement to judgment as a matter of law on grounds that Cornelius W. Sullivan (CWS) was the owner of the shares at issue, and plaintiff, administrator of the estate of Cornelius A. Sullivan (CAS), failed to raise a triable issue of fact (see generally [Alvarez v Prospect Hosp.](#), 68 NY2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923 [1986]). Plaintiff's case for ownership of the shares is based on an unsubstantiated comment by CAS's sister, an inscrutable, handwritten, undated list she found years after CAS's death that correlated with no other information received from defendant, and documents issued by defendant that were the product of plainly acknowledged error on its part. Plaintiff's suggestion that there may have been an account owned by CAS **[***2]** because she used his social security number to identify him in correspondence and because defendant kept track of accounts by social security

number as a general matter, is unavailing, as there is no proof that account searches performed by using CAS's social security number yielded any results.

In view of the foregoing, the conversion claim was properly dismissed because plaintiff was unable to show triable issues as to CAS's possessory right or interest in the property, such that defendant's dominion over the shares could be deemed wrongful ([Pappas v Tzolis, 20 NY3d 228, 234, 982 N.E.2d 576, 958 N.Y.S.2d 656 \[2012\]](#)). Her negligence claim was also properly dismissed because, without having presented triable issues as to whether CAS had an account maintained by defendant, she could not show defendant owed him any duty (see [Lauer v City of New York, 95 NY2d 95, 100, 733 N.E.2d 184, 711 N.Y.S.2d 112 \[2000\]](#)). The third-party beneficiary claim for breach of contract was properly dismissed. Having failed to create a triable [*539] issue that CAS owned the shares, plaintiff does not show how her third-party beneficiary theory is viable, or that CAS would have had any enforceable right on such basis (see [Alicea v City of New York, 145 AD2d 315, 534 N.Y.S.2d 983 \[1st Dept 1988\]](#)). Plaintiff shows no reason to disturb dismissal of the unjust enrichment claim, as she does not show why defendant's

return of the shares to CWS, after [***3] its mistaken transfer of them to her, should be deemed inequitable or unjust (see [Corsello v Verizon N.Y., Inc., 18 NY3d 777, 790, 967 N.E.2d 1177, 944 N.Y.S.2d 732 \[2012\]](#)).

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT.

ENTERED: October 15, 2020