

Foran v Computershare, Inc.
2019 NY Slip Op 30842(U)
April 3, 2019
Supreme Court, New York County
Docket Number: 150159/2016
Judge: Anthony Cannataro
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART IAS MOTION 41EFM

-----X	
MARIE FORAN,	INDEX NO. <u>150159/2016</u>
	MOTION
Plaintiff,	DATE <u>12/12/2018</u>
- v -	
COMPUTERSHARE, INC., JOHN DOE,	MOTION
	SEQ. NO. <u>002</u>
Defendants.	

DECISION AND ORDER

-----X

HON. ANTHONY CANNATARO:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 were read on this motion SUMMARY JUDGMENT(AFTER JOINDER).

Plaintiff Marie Foran commenced this action against defendant Computershare, Inc., a stock transfer agent, for conversion, negligence, third-party beneficiary, and unjust enrichment, alleging that Computershare refused to deliver to plaintiff shares of stock that were owned by the late Cornelius A. Sullivan. Plaintiff is administrator of Sullivan's estate. Defendants now move for summary judgment dismissing the second amended complaint pursuant to CPLR 3212 arguing that Cornelius A. Sullivan never owned the shares at issue.

Cornelius A. Sullivan, Ms. Foran's cousin, died on December 14, 2001. Following three prior executors, Ms. Foran was appointed administrator of the decedent's estate in

2010. Based on a conversation she had with Mary Sullivan, Cornelius A. Sullivan's sister and a handwritten list found in Cornelius A. Sullivan's house, Ms. Foran came to believe that the estate owned shares of several publicly traded companies, including AT&T Inc.

Seeking to locate and recover these shares, Ms. Foran wrote to AT&T in February 2010 requesting information about Cornelius A. Sullivan's ownership of AT&T stock. AT&T forwarded her letter to its stock transfer agent Computershare. Computershare then searched the name "Cornelius Sullivan" and found a matching account. On March 26, 2010, Computershare sent Ms. Foran a letter stating it maintained an account belonging to "Cornelius W. Sullivan as an individual" and identifying the account information. At Ms. Foran's request, Computershare changed the address associated with the account to Ms. Foran's address. Then, in 2013 it also transferred ownership of the account to Ms. Foran and terminated the account's enrollment in a dividend investment plan at her request.

Meanwhile, when Computershare processed an address change to its account in 2010, a notification of the change was sent to Cornelius W. Sullivan, a living individual residing in another state. After receiving this notice, Cornelius W. Sullivan called Computershare to complain that he had not made any such change to his account. Computershare advised Cornelius W. that it had made an error and would correct it. Then, in early 2013, Cornelius W. went on Computershare's website and discovered that, according to Computershare's records, he had no shares in his accounts. He also received notice that Computershare had terminated his enrollment in the dividend investment plan. Upon learning of these changes, Cornelius W. called once again called Computershare and expressed his frustration that an unauthorized person caused changes to his account.

On a motion for summary judgment, the movant carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the movant meets its initial burden, the burden shifts to the opposing party to “show facts sufficient to require a trial of any issue of fact” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Summary judgment may be granted upon a *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence sufficient to eliminate material issues of fact (CPLR 3212 [b]; *Alvarez*, 68 NY2d at 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). When there are no triable material issues of fact, it is incumbent upon a court, in the interests of judicial economy, to grant summary judgment (*Andre v Pomeroy*, 35 NY2d 557 [1980]).

In support of its motion, Computershare submitted an abundance of evidence demonstrating that Cornelius W. Sullivan, not Cornelius A. Sullivan, owned the shares that are at issue in this action. The evidence includes account statements, dividend reinvestment advices, 1099-DIV tax statements, direct registration advices, and correspondences relating to the shares. These documents were all addressed to Cornelius W. Sullivan at his home address, and the 1099-DIV tax statements contain his address and social security number. Also included as evidence is correspondence addressed to and received by Cornelius W. relating to his acquisition of shares as a result of various spinoffs and mergers, welcome letters from these issuers, account statements, summaries reflecting his reinvestment of dividends, and dated portfolio screens that Cornelius W. Sullivan printed from Computershare's website reflecting his ownership of the shares.

In addition to this documentary evidence, Computershare also provided the deposition testimonies of Sean Fontaine, Computershare's corporate representative, and Cornelius W. Sullivan. Mr. Fontaine testified that Computershare's records reflect that

Computershare did not maintain any accounts that were associated with the social security number of Cornelius A. Sullivan. Cornelius W. Sullivan testified that he owned all of the shares at issue and supported his testimony by producing documents reflecting how he came to own these shares. He further testified that he paid taxes on the dividends reflected in the 1099-DIV statements for over thirty years. He also identified his voice on recorded conversations he had with Computershare in February 2013 in which Computershare acknowledged that it had made an error transferring the shares to Cornelius A. Sullivan and that it would correct that error by transferring the shares back.

The evidence presented by Computershare demonstrates its *prima facie* entitlement to summary judgment as it set forth clear and convincing evidence that Cornelius W. Sullivan, and not Cornelius A. Sullivan, is the rightful owner of the account and the shares at issue. In response, plaintiff failed to demonstrate the existence of a question of material fact which would preclude an award of summary judgment. Plaintiff formed a belief in the existence of shares owned by the estate based upon a comment by the deceased's sister and a handwritten list in the deceased's room which, notably, does not even correlate to the number of shares in the Cornelius W. Computershare account. Further, plaintiff's belief that the Computershare account contains shares belonging to the deceased is based largely on conversations she had with various representatives of Computershare who, at the time, mistakenly believed that the account belonged to the late Cornelius A. Sullivan. Suggesting that Cornelius A. Sullivan was the owner of the accounts based on this information is nothing more than the presentation of a shadowy semblance of an issue, which is insufficient to defeat summary judgment (*American Sav. Bank v Imperato*, 159 AD2d 444 [1990] [internal citations omitted]).

Conversely, there is no reliable evidence in the papers before the Court indicating Cornelius A. Sullivan ever owned the account or its contents. There are no account statements, tax forms, income tax returns, registration advices, correspondences, or anything of the sort to indicate his alleged ownership.

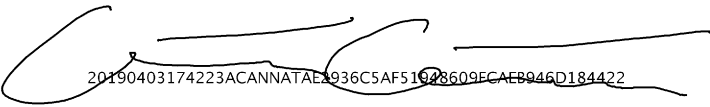
The balance of persuasive proof here amply demonstrates that Computershare mistakenly – and quite avoidably – misidentified Cornelius A. Sullivan as the owner of the shares at issue here. That error, however, is not sufficient to divest the true owner of the shares of his interest. To do so would simply perpetuate the initial error and inflict an injustice on the Cornelius W. Sullivan, the rightful owner of the shares. For these reasons, the complaint must be dismissed.

Accordingly, it is

ORDERED that defendant's motion for summary judgment is granted and the second amended complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

20190403174223ACANNATAE1936C5AF51028609FCAE8946D184422

<p><u>4/3/2019</u> DATE</p>	<p style="text-align: center;"> _____ ANTHONY CANNATARO, J.S.C.</p>																				
<p>CHECK ONE:</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <table border="0"> <tr><td><input checked="" type="checkbox"/></td><td>CASE DISPOSED</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>GRANTED</td></tr> <tr><td><input type="checkbox"/></td><td>SETTLE ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table> </td> <td style="width: 10%; vertical-align: middle; text-align: center;"> <input type="checkbox"/> DENIED </td> <td style="width: 40%; vertical-align: top;"> <table border="0"> <tr><td><input type="checkbox"/></td><td>NON-FINAL DISPOSITION</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED IN PART</td></tr> <tr><td><input type="checkbox"/></td><td>SUBMIT ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>FIDUCIARY APPOINTMENT</td></tr> </table> </td> <td style="width: 10%; vertical-align: middle; text-align: center;"> <input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE </td> </tr> </table>	<table border="0"> <tr><td><input checked="" type="checkbox"/></td><td>CASE DISPOSED</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>GRANTED</td></tr> <tr><td><input type="checkbox"/></td><td>SETTLE ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table>	<input checked="" type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> DENIED	<table border="0"> <tr><td><input type="checkbox"/></td><td>NON-FINAL DISPOSITION</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED IN PART</td></tr> <tr><td><input type="checkbox"/></td><td>SUBMIT ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>FIDUCIARY APPOINTMENT</td></tr> </table>	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE
<table border="0"> <tr><td><input checked="" type="checkbox"/></td><td>CASE DISPOSED</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>GRANTED</td></tr> <tr><td><input type="checkbox"/></td><td>SETTLE ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>INCLUDES TRANSFER/REASSIGN</td></tr> </table>	<input checked="" type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> DENIED	<table border="0"> <tr><td><input type="checkbox"/></td><td>NON-FINAL DISPOSITION</td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED IN PART</td></tr> <tr><td><input type="checkbox"/></td><td>SUBMIT ORDER</td></tr> <tr><td><input type="checkbox"/></td><td>FIDUCIARY APPOINTMENT</td></tr> </table>	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE		
<input checked="" type="checkbox"/>	CASE DISPOSED																				
<input checked="" type="checkbox"/>	GRANTED																				
<input type="checkbox"/>	SETTLE ORDER																				
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN																				
<input type="checkbox"/>	NON-FINAL DISPOSITION																				
<input type="checkbox"/>	GRANTED IN PART																				
<input type="checkbox"/>	SUBMIT ORDER																				
<input type="checkbox"/>	FIDUCIARY APPOINTMENT																				
<p>APPLICATION:</p>																					
<p>CHECK IF APPROPRIATE:</p>																					