

Appellate Division, First Judicial Department

Gische, J.P., Oing, Kennedy, Mendez, Shulman, JJ.

15404

TAMARA M. HARRIS, as Executor
of the Estate of STEVEN HARRIS,
Plaintiff-Appellant,

Index No. 23875/18E
Case No. 2020-03593

-against-

BERNICE L. HARRIS et al.,
Defendants-Respondents.

Tamara M. Harris, New York, appellant pro se.

Fleischman Bonner & Rocco LLP, White Plains (Keith M. Fleischman of counsel), for
Bernice L. Harris, respondent.

Mead, Hecht, Conklin & Gallagher, LLP, White Plains (Elizabeth M. Hecht of counsel),
for Allison Harris Schifini, respondent.

Order, Supreme Court, Bronx County (Howard H. Sherman, J.), entered on or
about July 8, 2020, which, insofar as appealed from as limited by the briefs, granted
defendants' motions to dismiss the complaint as against them, unanimously affirmed,
without costs.

We find, as an initial matter, that plaintiff has standing to appeal,
notwithstanding that she is no longer the personal representative of the estate, because
she was aggrieved by the order in her capacity as a beneficiary of the estate (*see* CPLR
5511; *Matter of Kaszirer v Kaszirer*, 286 AD2d 598, 598 [1st Dept 2001]; *Matter of
Farone*, 101 AD2d 986, 987-988 [3d Dept 1984], *revd on other grounds by* 65 NY2d
764 [1985]).

The complaint did not purport to state a claim for breach of fiduciary duty, and plaintiff's attempt to raise one on appeal was improper (*see Commissiong v State of N.Y. Div. of Hous. & Community Renewal*, 197 AD3d 1031, 1032 [1st Dept 2021]). The conversion and unjust enrichment claims were correctly dismissed on the basis of a prior turnover proceeding in Surrogate's Court. Plaintiff's objections to defendant's evidence establishing the existence of the prior proceeding are not considered because they were raised for the first time on appeal. The wrongful death claim was correctly dismissed for failure to sufficiently allege that defendants' purported misconduct caused the decedent's death. The claim also fails to sufficiently allege bad faith so as to remove defendants' conduct from the protection of Public Health Law § 2986(2).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 1, 2022



Susanna Molina Rojas
Clerk of the Court