

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

STEPHEN A. GALLO,

Plaintiff,

-against-

JENNY BONILLA,

Defendant.
_____X

IAS Part 6

Index No. 610589/2023

Mot. Seq. No. 002

DECISION AND ORDER

LEONARD D. STEINMAN, J.

The following submissions, in addition to any memoranda of law and/or statements of material facts, were reviewed in preparing this Decision and Order:

Defendant's Notice of Motion, Affirmation & Exhibits.....	1
Plaintiff's Affirmation in Opposition & Exhibits.....	2
Defendant's Affirmation in Reply.....	3

In this action, plaintiff alleges that defendant, his former girlfriend, sent an email to his employer—the Town of Hempstead—that accused him of workplace misconduct of a sexual nature and included a video that depicted text messages between plaintiff and a female co-worker. The email, under the subject “Urgent Whistleblower,” purported to be from a lawyer and referred to “charges pending for a client” against plaintiff. Defendant previously had pressed criminal charges against plaintiff pertaining to an altercation between the two (plaintiff eventually plead guilty to a reduced charge of disorderly conduct). Defendant now seeks summary judgment, pursuant to CPLR 3212, dismissing the remaining cause of action alleging tortious interference with business relations.¹ For the reasons set forth below, the motion is denied.

It is the movant who has the burden to establish an entitlement to summary judgment as a matter of law. *Ferrante v. American Lung Assn.*, 90 N.Y.2d 623 (1997). “CPLR 3212(b)

¹ In a Decision and Order dated May 31, 2024, this court (McCormack, J.) dismissed all other causes of action contained in the Amended Complaint.

requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material fact on every relevant issue raised by the pleadings, including any affirmative defenses.” *Stone v. Continental Ins. Co.*, 234 A.D.2d 282, 284 (2d Dept. 1996). Where the movant fails to meet its initial burden, the motion for summary judgment should be denied. *U.S. Bank N.A. v. Weinman*, 123 A.D.3d 1108 (2d Dept. 2014).

A defendant’s burden cannot be satisfied merely by pointing to gaps in the plaintiff’s proof. *In re New York City Asbestos Litigation (Carriero)*, 174 A.D.3d 461 (1st Dept. 2019); *Vittorio v. U-Haul Co.*, 52 A.D.3d 823 (2d Dept. 2008).

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065 (1979).

Defendant argues that she is entitled to summary judgment primarily for two reasons: first, that plaintiff cannot prove that she sent the email at issue and, second, because plaintiff’s business relationship has not been damaged as a matter of law.

The latter argument is clearly unpersuasive. Plaintiff testified that as a result of the receipt of the email, the Town transferred him out of his job duties within the Town Attorney’s Office, where he had been employed as a law assistant for approximately 20 years on a part-time and full-time basis, and moved him into the Parks and Recreation Department. He thereafter was not promoted notwithstanding testing well on a civil service examination. As a result, the conditions of plaintiff’s employment were affected and plaintiff’s claims cannot simply be dismissed as “vague aspirations” of advancement. *Cf. Miller v. Livanis*, 189 A.D.3d 446 (1st Dept. 2020); *Beneficial Fin. Co. of New York, Inc. v. Youngman*, 57 A.D.2d 727 (4th Dept. 1977).

Whether plaintiff can prove defendant sent the email is a closer question, but not the question this court must answer. Instead, to prevail on her summary judgment motion defendant must prove that she did *not* send the email and cannot simply point to hurdles

plaintiff will face at trial. Although defendant denies sending the email, she concedes she took the video attached to it and that it was only shared with law enforcement (and plaintiff himself). Furthermore, given the surrounding circumstances, defendant arguably had a malicious motive to send the email. And, as an interested party, her testimony may be discounted by the jury. *See Quiroz v. 176 N. Main, LLC*, 125 A.D.3d 628, 631 (2d Dept. 2015) (self-serving statements which refer to knowledge solely within their possession create an issue of credibility that is not for the court to decide). Given the circumstantial evidence, this court cannot conclude that a jury finding against defendant would be based solely upon speculation and not a reasonable inference. *Rivera v. 203 Chestnut Realty Corp.*, 173 A.D.3d 1085 (2d Dept. 2019) (circumstantial evidence set forth sufficient facts upon which defendant's liability could be reasonably and logically inferred).

As a result, defendant's motion is denied.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of the court.

Dated: July 2, 2025

Mineola, New York

ENTERED

Jul 10 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE

ENTER:



LEONARD D. STEINMAN, J.S.C.