SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

STEPHEN A. GALLO, Plaintiff, -against JENNY BONILLA, Defendant.	Index: 610589/2023

MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This case hinges on the source of an e-mail that was sent to Mr. Gallo's employer. The e-mail falsely accused Mr. Gallo of workplace misconduct while attaching videos depicting personal and sexual text messages that Mr. Gallo had shared with a third-party woman in a purely consensual relationship. The e-mail purported to be from an attorney, using the e-mail address "lawyernassaucounty430@gmail.com," and it claimed to be written on behalf of Mr. Gallo's girlfriend to report "harassment/misconduct" and a "hostile work environment." Despite having worked in the local Town Attorney's Office for nearly twenty years, the e-mail was so accusatory and sexually explicit that within eight days Mr. Gallo was transferred out of his job and sent to the Parks and Recreation Department to clean golf balls and sweep floors.

As this Court has already recognized in the context of Mr. Gallo's claim for tortious interference with business relations, if Ms. Bonilla, the Defendant in this case, wrote this e-mail falsely claiming to be an attorney, "then doing so would have been solely out of malice."[1] And the record evidence strongly reinforces the fact that indeed she did: under oath, she admitted that the videos embedded into the e-mails depict a hand scrolling through Mr. Gallo's phone, and that that hand belongs to her; she admitted that she created the videos; and she admitted that she had sent them to nobody but Mr. Gallo himself and a local detective—neither of whom, of course, would have had any incentive to defame Mr. Gallo under the false pretense of being an attorney. This is in contrast to Ms. Bonilla, whose motive has always been fairly straightforward: only months before, she had suffered an ugly breakup with the man she had been in love with, and she had grown irate and jealous upon learning that he had moved onto a new romance after her, and

[1] *See* Exhibit K.

thus she wrote an e-mail that successfully derailed the careers of both her ex-boyfriend—Mr. Gallo—and his new girlfriend who, also, was immediately removed from the Town Attorney's Office as well.

In the face of this evidence, Ms. Bonilla now asks the Court to accept the proposition that there is no material fact in dispute concerning her authorship of this e-mail or the damages it sprang. While her arguments might be appropriate for a summation after trial, however, they furnish no grounds for a summary judgment—where denial is required by the very existence of disputed facts, like the e-mail's provenance or its causal relationship to Mr. Gallo's job changes.

Because the outcome of Mr. Gallo's claim against Ms. Bonilla hinges on facts that remain in sharp dispute, the outcome of their case cannot be decided on summary judgment, and the motion should be denied.

BACKGROUND

Stephen Gallo was hired by the Town of Hempstead Attorney's Office as a part-time Clerical Aide in July 2003 after he completed his sophomore year of college at New York University. He continued to work in the Town Attorney's Office on a part-time basis for the next several years as he completed his undergraduate studies and after he then obtained a Master's degree in Public Policy from Stony Brook University. He became a full-time employee in the Town Attorney's Office in January 2011, and he remained there for more than a decade—until his tenure came crashing down at the hands of the Defendant. *See* Affirmation of Stephen Gallo ("Gallo Aff.") at ¶3.

When Mr. Gallo became a full-time employee, his title was "Law Assistant." Because this was not a Civil Service title, he took the Civil Service examination later in 2011 to obtain the title of "Administrative Trainee"—and scored a "100" on the test. His title eventually grew from

"Trainee" to "Administrative Assistant," and over the course of his tenure inside the Town Attorney's Office he produced consistently high-quality work and drew the appreciation and respect of his colleagues, with no disciplinary action on his record whatsoever. *See* Gallo Aff. at ¶4.

In August 2018, Mr. Gallo began an exclusive dating relationship with Jenny Bonilla—the defendant in this case. While the parties enjoyed a close bond, the relationship ultimately ran its course and in the end Mr. Gallo informed Ms. Bonilla that he no longer wished to be "exclusive" with her. Ms. Bonilla became upset, but ultimately, she agreed to the modified relationship, and they continued to see each other in a non-exclusive fashion. *See* Gallo Aff. at ¶5.

On June 26, 2022, the relationship came to a crashing halt. Meeting Mr. Gallo in Maryland while he was on a trip with his softball team, she booked a hotel room for him and her and then surreptitiously began perusing his cell phone while he was in the shower. In the process, Ms. Bonilla came across a sexually charged series of text messages between Mr. Gallo and another woman. Becoming irate, she began videoing herself perusing Mr. Gallo's phone—creating videos that depicted her hand, the phone, and the text messages as she scrolled through them. As she later admitted, she never sent these videos to anyone except to Mr. Gallo himself and, as explained below, to law enforcement. *See* Gallo Aff. at ¶6. *See also* Exhibit A at 90-97; and Exhibits B-D (videos).

By July 9, 2022, Mr. Gallo and Ms. Bonilla's relationship had irretrievably broken down, and Mr. Gallo decided to attend a friend's birthday party in North Bellmore, New York, joined by a woman with whom he was developing a new romantic relationship. As the party wound down, Mr. Gallo and his new girlfriend agreed to each take their cars back to his apartment. But when

he arrived, he was immediately approached by Ms. Bonilla—who had been lying in wait for him in her car across the street. *See* Gallo Aff. at ¶7.

Ms. Bonilla lost her temper, and, upon observing Mr. Gallo's new girlfriend she aggressively approached her while Mr. Gallo attempted to intervene and stand between them—fending off Ms. Bonilla's shoves and attempts to maneuver past him. Amidst the chaotic scene, Mr. Gallo's new girlfriend left, and Ms. Bonilla told Mr. Gallo that she was going to have him arrested—which he laughed off, chalking it up to an expression of her rage and jealousy, and went inside his home. Five minutes later, he heard banging at his back door and observed Ms. Bonilla on the other side—continuing her attempt to prolong the dispute and to express her rage until she finally left. *See* Gallo Aff. at ¶8.

The next morning, July 10, two detectives from the Nassau County Police Department came to Mr. Gallo's apartment and arrested him for alleged third-degree assault and third-degree robbery—the former claim alleging that Ms. Bonilla had suffered a torn rotator cuff, and the latter claim being based upon the allegation that Mr. Gallo had briefly seized her cell phone before Ms. Bonilla seized it back. Mr. Gallo was in shock, as he had never been arrested before and knew that the allegations were false—but grew fearful of being railroaded because Ms. Bonilla's brother, Jesus Bonilla, was a detective in the Nassau County Police Department. *See* Gallo Aff. at ¶9; Exhibit E. *See also* Exhibit A at 22-23.

While the criminal charges remained pending, Ms. Bonilla escalated the campaign of revenge against her ex-boyfriend in a fashion that now forms the basis of this case. On the afternoon of October 5, 2022, she created a false persona and sent e-mails to the Town of Hempstead Supervisor's Office, the Town of Hempstead Civil Service Commission, and the Town of Hempstead Department of Human Resources—posing as an attorney, using the e-mail address

"lawyernassaucounty430@gmail.com," and claiming that she was representing a part-time employee of the Town Attorney's Office who had made charges against Mr. Gallo of "harassment/misconduct" and suggesting a "hostile work environment." All of this was false: she is not an attorney, was not acting on anyone else's behalf, and neither Mr. Gallo's new girlfriend nor anyone else had made any complaints about him. While she has never admitted her authorship of this e-mail, it contained her electronic fingerprints—attaching the videos that Ms. Bonilla had made, depicting her own hand, which she admitted she had never sent to anyone else but law enforcement or Mr. Gallo himself. *See* Gallo Aff. at ¶10; Exhibit A at 131-32, 140; Exhibit F.

The following morning, October 6, 2022, supervisors inside the Town of Hempstead Attorney's Office questioned Mr. Gallo about the e-mail—including the Town's personnel attorney and, on information and belief, the Town Attorney himself. The following day, Mr. Gallo's girlfriend reported to Mr. Gallo that the Town Attorney intended to now transfer her out of the Town Attorney's Office and to the Town of Hempstead Animal Shelter—and that, according to her supervisor Catherine Brooks, the purpose of that transfer was the anonymous e-mail. *See* Gallo Aff. at ¶11. While Ms. Bonilla claims that there is no genuine dispute about whether she authored the e-mail causing this fallout, the third-party girlfriend, too, came to the exact same conclusion as to Ms. Bonilla's obvious role and confronted her. "Please stop making shit up and contacting my job. And don't pretend like you don't know what I'm talking about. I have been nothing but nice to you when I shouldn't have been bc you are completely fucking crazy," she said. *See* Exhibit L at DEF015. "Leave me alone [,] do not contact me and do not contact anyone regarding anything about me especially things that are not true. Have a nice life and get your mental health together." *Id*.

On October 12, 2022, eight days after Ms. Bonilla's e-mail, Mr. Gallo was unofficially transferred out of the Town Attorney's Office and to the Parks and Recreation Department where he would work at Merrick Golf Course. *See* Gallo Aff. at ¶11. Mr. Gallo's job duties at the golf course were those of an entry-level manual laborer. His daily tasks consisted of picking up golf balls on the driving range, washing golf balls, sweeping floors, and other similar tasks. *See* Gallo Aff. at ¶12.

On November 16, 2022, Mr. Gallo learned the results of a test administered by the Town of Hempstead Civil Service Commission. He had scored a "100" and was ranked #1 on the list for the title of Administrative Officer I—which would constitute a material promotion from "Grade 20" to "Grade 22," and which would be subject to an automatic step-up in salary larger than the ordinary promotions and which, in turn, would entitle Mr. Gallo to continue climbing the ladder of municipal employment to one day seek Grade 24 status.[2] *See* Gallo Aff. at ¶13; Exhibit G.

Yet despite his perfect score, spotless personnel record, and long-term loyalty to the Town, Mr. Gallo was not granted the promotion and has not been granted it to this day. For purposes of context: there were ten employees of the Town who achieved passing grades on this Civil Service examination; Mr. Gallo was the only one to achieve a perfect score; and yet six out of the nine other employees who passed the examination have already received the promotion (from Grade 20 to Grade 22)—including two employees who scored 15 points lower than Mr. Gallo, and one whose score was worse than Mr. Gallo's by 25 points. *See* Gallo Aff. at ¶14; Exhibit H.

For further context, the surrounding circumstances corroborate that the driving force of Mr. Gallo's employment injury was Ms. Bonilla's e-mail rather than the existence of charges against him. Indeed, there is an actual test case: he was not the only person in the Town Attorney's Office

[2] This was not an "Open Competitive" examination, but was Promotional, meaning that the only requirement was for Mr. Gallo to pass the test.

who was facing criminal charges during this timeframe. A Deputy Town Attorney with the initials D.M. had, on information and belief, been arrested for impaired or intoxicated driving; yet, unlike Mr. Gallo, she was never transferred from the office or moved from it even temporarily. The difference was nobody had contacted her superiors to falsely accuse her of engaging in misconduct in the workplace. *See* Gallo Aff. at ¶15.

On November 30, 2022, the Nassau County District Attorney's Office dropped the felony robbery charge against Mr. Gallo, and in January 2023 it agreed to drop the misdemeanor assault charge if Mr. Gallo would accept a non-criminal (and sealed) disposition of disorderly conduct. Notwithstanding his misgivings, Mr. Gallo accepted the deal because of the highly favorable terms and the elimination of further risk in the criminal justice system. Thus, the criminal charges have been resolved, leaving only the e-mail and false allegations of harassment without official resolution. In its shadow, on April 3, 2024, Mr. Gallo's transfer from the Town Attorney's Office to the Parks Department became official. *See* Gallo Aff. at ¶16; Exhibit I; Exhibit J.

On July 5, 2023, Mr. Gallo initiated the present action against Ms. Bonilla. He asserted claims for tortious interference with business relations, intentional infliction of emotional distress, and defamation. On May 31, 2024, the Court dismissed two of Mr. Gallo's claims while preserving his cause of action for tortious interference with business relations—recognizing that if Ms. Bonilla did indeed write the anonymous e-mail to his employer falsely claiming to be an attorney, "then doing so would have been solely out of malice." *See* Exhibit K.

On February 18, 2025, Ms. Bonilla filed a motion for summary judgment—claiming that there were no genuine factual disputes as to whether she wrote the e-mail or over the questions of malice or damages. For the reasons set forth below, we respectfully request that her motion be denied.

ARGUMENT

I. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED, BECAUSE THE SOURCE OF AND MOTIVATION FOR THE "INTERFERING E-MAIL" RAISE GENUINE DISPUTES OF FACT.

In the aftermath of an ugly breakup with the Plaintiff, Jenny Bonilla sent an anonymous e-mail to her ex-boyfriend's employer in which she pretended to be a lawyer, reported that he was the subject of "charges" within his workplace at the Town of Hempstead, and provided his employer with copies of private sexual communications that he had exchanged with another woman. At that time, her ex-boyfriend, Mr. Gallo, had been working part-time or full-time in the Hempstead Town Attorney's Office for 19 years. Within eight days that tenure was over: Mr. Gallo was unofficially transferred from the Town Attorney's Office to a local golf course, and within 18 months his removal from the Town Attorney's Office became official.

If proven at trial, Ms. Bonilla's conduct would provide a fairly straightforward basis for liability for tortious interference with business relations ("TIBR"). The elements of a TIBR claim are (1) "a business relationship with a third party," (2) "that the defendant knew of that relationship and intentionally interfered with it," (3) "that the defendant's actions were motivated solely by malice or otherwise constituted illegal means," and (4) "that the defendant's interference caused injury to the plaintiff's relationship with the third party." *See, e.g., 684 E. 222nd Realty Co. LLC v. Sheehan*, 185 A.D.3d 879-80 (2d Dept. 2020).

Here, at a minimum, Ms. Bonilla's anonymous e-mail presented genuine disputes of fact as to her liability for TIBR. Mr. Gallo had a business relationship with the Town Attorney's Office in Hempstead; and the very existence of Ms. Bonilla's e-mail demonstrated that she knew of that relationship and intentionally interfered with it—accusing Mr. Gallo of "certain violations,"

"disturbing content" on his phone, "potential [] … sexual harassment/misconduct," and a "hostile work environment." The e-mail also creates a genuine question of fact as to whether Ms. Bonilla's actions were solely malicious or otherwise illegal, as she was not employed by the Town of Hempstead, stood nothing to gain by harming Mr. Gallo's employment there, and sought to accomplish that vengeful purpose through the fraudulent claim that she was an attorney representing Mr. Gallo's new girlfriend—even though she is not an attorney, had no relationship with Mr. Gallo's new girlfriend, and in fact his new girlfriend had not lodged a complaint against him at all. And Mr. Gallo's relationship with the Town of Hempstead consequently suffered, as he was transferred out of the office where he had devoted his entire career and was sent to work at a golf course—after which he has been passed over for promotions given to those with significantly lower scores on the same promotional examination. *See* Gallo Aff. at ¶14; Exhibit H.

Nevertheless, Ms. Bonilla now asks the Court for summary dismissal of the TIBR claim. Her argument is two-pronged: first, she denies that she was the source of the e-mail to Mr. Gallo's employer, and she claims that discovery did not substantiate her role in sending it; and second, she says that whoever wrote the e-mail would not have acted wrongfully or solely out of malice. *See* Def. Memo. at 5-9. For the reasons set forth below, neither one of these arguments lives up to the demands of summary judgment, and instead either magnifies the extent to which the dispute in this case presents questions of fact or relies upon a fundamental misunderstanding of the governing law in this arena. Because factual questions remain across the foundation of this litigation, summary judgment should be denied.

A. Attribution of the E-Mail Presents a Question of Fact for a Jury, Not a Question of Law for the Court.

Citing Ms. Bonilla's allegedly "undisputed testimony" that she "neither wrote … nor knew of" the e-mail to Mr. Gallo's employer, the defense seeks summary judgment—claiming that

evidence of her authorship is "woefully insufficient" to defeat her motion. *See* Def. Memo. at 9. In truth, Ms. Bonilla's self-serving denial of wrongdoing fails to accomplish what she claims, and instead the attribution of the e-mail presents a classic dispute of fact for which summary judgment is not available.

The summary judgment standard is oft-stated but worth repeating here: it provides courts with the opportunity "not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist." *See, e.g., Schultheis v. Arcate*, 216 A.D.3d 1018, 1019 (2d Dept. 2023) (internal quotations omitted). Thus, "where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility," a "motion for summary judgment should not be granted." *Id*.

Drawing from these basic principles about factual disputes, inferences, and credibility, New York law has developed a rule in the summary judgment context that has a straightforward application here: "[o]n a motion for summary judgment, self-serving statements of an interested party which refer to matters exclusively within that party's knowledge create an issue of credibility which should not be decided by the court but should be left for the trier of facts." *Sacher by Sacher v. Long Island Jewish-Hillside Med. Ctr. Inc.*, 142 A.D.2d 567, 567 (2d Dept. 1988). *See also Quiroz v. 176 N. Main LLC*, 125 A.D.3d 628, 631 (2d Dept. 2015).

Here, Ms. Bonilla's motion for summary judgment should be denied because it flouts this basic rule: while claiming that she did not write the fateful e-mail to Mr. Gallo's employer, this self-serving denial relies exclusively on her own credibility and is thus an improper foothold for a summary dismissal.

Indeed, Ms. Bonilla is not just asking for a favorable credibility determination on an empty canvas, but far worse: the inference she wants the Court to draw—that she did not write this e-

mail—runs contrary to evidence affirmatively in the record that renders her denial highly implausible. Take it from Ms. Bonilla herself: the e-mail in issue contained video of someone's hand perusing sexual communications in Mr. Gallo's cell phone, and Ms. Bonilla admitted under oath that (a) she created that video, (b) the perusing-hand in the video belonged to her, and (c) she did not share the video with anyone other than law enforcement and Mr. Gallo himself. *See* Exhibit A at 131 ("Q Is that your hand? A This is the original video that I took. Q I'm just asking, is that your hand? A Yes, yes."). *See also id*. at 132 ("Q Okay. So other than sending it to the detective and to Stephen, did you send it to anybody else? A Like I said, just Steve and that's it.").

That is to say, the inference that Ms. Bonilla would like the Court to draw is that the source of the defamatory e-mail from "lawyernassaucounty430@gmail.com" was either a member of law enforcement or Mr. Gallo himself—not the jilted ex-girlfriend who admits having created the video that the e-mail attaches, and who the other person referenced in the e-mail, Mr. Gallo's then-girlfriend, also immediately deduced was the author. *See* Exhibit L at DEF015 ("Please stop making shit up and contacting my job. And don't pretend like you don't know what I'm talking about"). Ms. Bonilla has the right to propose this inference to a jury and to forcefully deny her authorship from the witness stand. But she may not rely upon that movant-friendly inference to obtain a summary judgment.

B. Whether Ms. Bonilla Acted Solely Out of Malice, or Otherwise Illegally, Presents a Genuine Dispute of Fact.

The defense argues that summary judgment over the TIBR claim should be granted because of insufficient evidence of malice or wrongfulness. While conduct giving rise to this cause of action must be directed at the third-party, she reasons, the alleged malice here was always directed at just Mr. Gallo. *See* Def. Memo. at 8. In her words, Mr. Gallo "appears to be claiming that the sender of the e-mail was maliciously or improperly attempting to harm Plaintiff rather than

directing his or her action to the [third party] Town of Hempstead." *See* Def. Memo. at 8. "[N]othing in the e-mail or its attachments," she concludes, "was capable of exerting wrongful or malicious pressure upon the Town to act." *Id*. at 9.

Ms. Bonilla's analysis of the malice/wrongfulness prong of a TIBR claim is mistaken from both a doctrinal and factual level.

First, doctrinally, her analysis confuses two different elements of any TIBR claim: to whom the defendant must direct the *interference* (on one hand), and the defendant's ultimate *motive* (on the other). Ms. Bonilla correctly notes that the interfering conduct underlying a TIBR claim must be directed at a third-party, but the required motive for TIBR will always be to cause harm to the plaintiff—not the third party.[3] *See, e.g., Tri-Star Lighting Corp. v. Goldstein*, 141 A.D.3d 1102, 1106 (2d Dept. 2017) (as for the motive element, defendant must act unlawfully, improperly, or seek solely to harm "the plaintiff"). *See also Fonar Corp. v. Magnetic Resonance Plus Inc.*, 957 F. Supp. 477, 482-83 (S.D.N.Y. 1997) (analyzing issues separately: sufficient "interference" found where directed at third-party customers "Tahoe Imaging Center" and "Magnetic Imaging of Paris"; and sufficient "wrongful[ness]" found where plaintiff learned of customer-names by entering plaintiff's premises under false pretenses).

Failing to account for this distinction, Ms. Bonilla's analysis veers off course. All parties to this litigation will acknowledge that the fateful e-mail was sent to the third-party Town of Hempstead even though Ms. Bonilla may have harbored no ill-will toward the Town. But that dichotomy is what renders the TIBR claim viable—not what defeats it: namely, she engaged in

[3] This dichotomy makes sense, for if the *malice* had to be harbored as to the same third-party party against whom the *interference* is directed, this would mean that TIBR plaintiffs were legally required to be mere collateral damage in schemes against others.

conduct directed at a third-party designed to harm Mr. Gallo. If she had harbored her ill-will toward the Town instead of him, in fact, then Mr. Gallo would have had no claim in the first place.

Second, factually, there is more than enough evidence in the record to establish that Ms. Bonilla would have harbored sufficient malice for purposes of TIBR liability. Indeed, there is no good explanation for why Ms. Bonilla would have contacted Mr. Gallo's employer in this fashion *other* than to harm him. She had no independent connection to Mr. Gallo's employer. *See* Exhibit A at 140. And if she had written the e-mail for altruistic reasons, she would not have written it under fraudulent pretenses—either of being an attorney or of acting on behalf of Mr. Gallo's new girlfriend. Indeed, the very reason why Ms. Bonilla continues to deny her authorship of this e-mail is because she knows that if she admits writing it then her liability will become straightforward—as this Court has already recognized. *See* Exhibit K (NYSCEF Doc. No. 27) ("Assuming Bonilla did send the e-mail, pretending to be a lawyer, then doing so would have been solely out of malice").

Beyond malice, this manner of engaging in such conduct was also squarely improper and unlawful. If Ms. Bonilla wrote this e-mail, then, by definition, it means that in communications with a local government she lied about being an attorney and lied about who she was acting on behalf of—all to harm her ex-boyfriend after an ugly breakup. Among other things, this conduct would constitute Criminal Impersonation in violation of Penal Law §190.25(2) ("A person is guilty of criminal impersonation in the second degree when [s]he … [p]retends to be a representative of some person … and does an act in such pretended capacity with intent to … injure or defraud another"). And it would constitute a violation of Judiciary Law §478—which renders the unauthorized practice of law unlawful and a misdemeanor. *See* Judiciary Law §485.

Once again, Ms. Bonilla's motion does not just ask the Court for an alternative finding as to her malice or wrongfulness; it seeks a ruling that the question of malice and wrongfulness be considered *beyond genuine dispute*. There is no basis at law for such a finding, and the motion should be denied.

II. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED, BECAUSE THE QUESTION OF DAMAGES PRESENTS A TRIABLE ISSUE.

Within eight days of Ms. Bonilla's e-mail, Mr. Gallo was transferred out of the job where he had been working part-time or full-time for the previous 19 years. He was moved from working in the Town Attorney's Office to a golf course for the local Parks and Recreation, taking his skillset gained over nearly two decades in the Town Attorney's Office and rending it largely obsolete, after which he was passed over for a promotion to "Administrative Officer I" level and suffered lower pay-raises than he reasonably could have expected absent the interference.[4] *See* Gallo Aff. at ¶¶13-14. To Ms. Bonilla, this is insufficient injury for purposes of TIBR since he "remain[ed] gainfully employed" by the Town of Hempstead, did not lose leave time or suffer a reduction in salary, and suffered the transfer to Parks and Recreation only after having reported the existence of his arrest. *See* Def. Memo. at 9-10.

However, this argument misconstrues the legal injury requirement in TIBR claims, it takes improper account of Mr. Gallo's injuries in fact, and, in the end, it once again magnifies a disputed issue of fact—this time: causation—rather than showing that no such genuine dispute exists, as required. For these reasons, set forth more fully below, summary judgment should be denied.

[4] Mr. Gallo was denied a promotion to Administrative Officer I level while multiple others received such a promotion with lesser civil service exam scores, including several whose scores were worse by a substantial margin. *See* Gallo Aff. at ¶¶13-14.

A. Mr. Gallo Suffered "Some Injury."

Under New York law, for purposes of damages, plaintiffs in the TIBR context "need only establish that the … interference caused injury to the relevant relationship…." *Gorat v. Capala Bros.*, 2011 WL 6945186, at *6 (E.D.N.Y. 2011) (rejecting notion that interference targeting employer had to require employees to "quit"). The bar is low: the standard in the employment context is not termination or other maximum or extreme injury; it simply requires that the relationship suffer "some injury." *Id*. (internal quotations omitted). *See also Int'l Jet Markets Inc. v. Simat*, 1997 WL 501685, at *7 (S.D.N.Y. 1997) (applying "some injury" rule); *Rosenfeld v. W.B. Saunders*, 728 F. Supp. 236, 250 (S.D.N.Y. 1990) (same).

A prime example of such an injury is a showing that "the conditions of … employment were affected…." *Beneficial Fin. Co. of N.Y. v. Youngman*, 57 A.D.2 727, 727 (4th Dept. 1977) (denying claim after evaluating whether plaintiff alleged "that she was discharged from her employment or that the conditions of her employment were affected") (emphasis added).

Mr. Gallo satisfies the "some injury" rule, as the record substantiates that the conditions of his employment were affected: he lost his employment role inside the Town of Hempstead; was banished from a legal office and sent to a golf course, where the crossover for his skillset was minimal; and was then passed over for promotions he reasonably could have expected based upon his civil service test scores. The defense is free to downplay these injuries to mitigate potential damages before a jury, but it may not avoid a jury by glossing over the injuries altogether.

B. Causation Presents a Question of Fact For Trial.

Tacitly recognizing the existence of injuries that Mr. Gallo sustained, the defense makes a causation argument—claiming that Mr. Gallo must have suffered his injuries as a result of his report of criminal charges against him, not as a result of Ms. Bonilla's e-mail to his employer. *See*

Def. Memo. at 9-10. But this argument simply erects a question of fact rather than avoiding one, and thus it only reinforces the defective nature of the request for summary judgment.

In the context of a TIBR claim, state and federal courts applying New York law have "equated the [injury] element to a showing of 'proximate causation.'" *Pride Techs LLC v. Khublall*, 2022 WL 17587755, at*1 (2d Cir. 2022). *See also Pacheco v. United Med. Assocs.*, 305 A.D.2d 711, 712 (3d Dept. 2003) (identifying "proximate cause" standard). This link to "proximate causation" has two relevant consequences here.

First, it underscores that the claim "does not require … that the defendant's conduct [be] the sole proximate cause of the alleged harm." *See, e.g., Kronish Lieb Weiner & Hellman LLP v. Tahari Ltd.*, 35 A.D.3d 317, 318 (1st Dept. 2006) (emphasis added). *See also Nat'l Fin. Partners Corp. v. USA Tax & Ins. Servs. Inc.*, 145 A.D.3d 440, 441 (1st Dept. 2016) (noting that proximate cause does not require being the "sole proximate cause"). And second, it underscores the factually intensive nature of the inquiry—for, given that there "may be more than one proximate cause …, generally, it is for the trier of fact to determine the issue of proximate cause." *Chen v. City of New York*, 194 A.D.2d 904, 906 (2d Dept. 2021).

These consequences clarify the fundamental flaws in the Defendant's motion for summary judgment: Ms. Bonilla highlights the criminal charges as a potential reason for Mr. Gallo's employment injuries, yet the existence of one proximate cause does not preclude the other from being an additional cause; and, presenting the thorny question about which cause inflicted which injury, the defense has simply presented the Court with a classically factual question to which all favorable inferences must be construed in Mr. Gallo's favor—not against him—leaving the task of untangling "proximate cause … for the trier of fact to determine." *See Chen*, 194 A.D.3d at

906. *See also Nat'l Fin. Partners*, 145 A.D.3d at 441 (defendant "need not be the sole proximate cause" and "[i]ssues of fact … exist as to plaintiffs' damages").

Beyond these basic flaws, there are reasons in the record to doubt the veracity of Ms. Bonilla's causation analysis. Most notably, if the existence of charges in criminal court were the cause of Mr. Gallo's transfer, then one would expect similar treatment to other people in the same office who were also charged in criminal court at the same time. Indeed, such a test-case exists, for during the same time period a Deputy Town Attorney was facing DUI charges—yet she was not transferred or even temporarily removed. *See* Gallo Aff. at ¶15. The difference was, unlike for Mr. Gallo, nobody had begun an anonymous campaign against her to defame her with allegations of workplace misconduct, and nobody had sent her supervisors any private or sexually explicit communications that could only serve to humiliate her.

At bottom, questions of fact remain entrenched in this litigation concerning the causal nexus between Ms. Bonilla's e-mails and Mr. Gallo's transfer out of the only workstation he had known for nearly twenty years. The proceeding designed to evaluate that causal relationship is a trial, not a motion, and thus the summary judgment application should be denied.

CONCLUSION

For these reasons, we respectfully request that the Defendant's motion for summary judgment be DENIED.

Dated: Garden City, New York
March 28, 2025

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