SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HON. ROBERT D. LIPPMANN Justice — PART 21

JOHN SHANNON and VIRGINIA SHANNON,

Plaintiffs,

- vs -

MTA METRO-NORTH RAILROAD, LEONARD W. MAGLIONE, JANET WILLIAMS, WILLIAM G. LEHN, ROBERT E. LIEBLONG and ROGER G. KLOPFER,

Defendants.

INDEX NO. 113786/96

MOTION DATE

MOTION SEQ. NO. 004

MOTION CAL. NO. 113

The following papers, numbered 1 to ___ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause – Affidavits – Exhibits	
Answering Affidavits – Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ■ No

Defendants move pursuant to CPLR 3212(b) for summary judgment dismissing plaintiffs' complaint.

Plaintiff John Shannon ("plaintiff") brought this action alleging that his employer, defendant MTA Metro-North Railroad ("MTA"), and superiors (the individual defendants) individually and collectively engaged in an ongoing intentional pattern of abusive and retaliatory conduct which caused him to suffer demotions, loss of pay, emotional distress and psychological harm, and disrupted his relations with his co-

workers, wife and children. Plaintiff's wife, Virginia Shannon, asserted derivative claims which have been discontinued with prejudice on consent (see exhibit F to moving papers).

According to plaintiff, who has been employed by MTA since 1975, when he attempted to exercise his seniority rights in 1990 to choose a supervisory position, defendants thwarted him and made him a safety supervisor assigned to menial tasks such as cleaning up litter. Plaintiff's successful grievance resulted in defendants, led by Maglione, conducting a years-long harassment campaign which included depriving plaintiff of the car that went along with the supervisor's job, filing disciplinary charges against him for minor infractions, demoting him, and depriving him of overtime. Unfair charges were filed against him over two separate incidents which led to suspensions without pay, and he was unreasonably singled out on time and reporting procedures. In 1994, the National Railway Mediation Board restored plaintiff to his supervisory position, but the harassment campaign continued.

Plaintiff sued defendants in federal court alleging federal civil rights violations as well as state law claims. The District Court found plaintiff had failed to state a claim under federal law, declined to exercise pendent jurisdiction over the state law claims, and dismissed the action (Shannon v. MTA Metro-North Railroad, 915 F Supp 591 [SDNY 1996]). Upon the dismissal, plaintiff filed suit in state court and defendants removed the case back to the District Court, which granted plaintiff's motion to remand plaintiff's claims back to this court (Shannon v. MTA Metro-North Railroad, 952 F Supp 177 [SDNY 1997]).

The complaint at bar asserts three causes of action: (i) intentional infliction of emotional distress, (ii) defamation and (iii) tortious interference with contractual relations. By decision dated May 25, 1999 (exhibit C to moving papers), this court granted defendants' motion for summary judgment to the extent of dismissing plaintiff's second and third causes of action. On appeal, the First Department modified that decision to the extent of reinstating plaintiff's claim for tortious interference with contractual relations (Shannon v. MTA Metro-North Railroad, 269 AD2d 218 [1st Dept 2000]).

In the instant motion, defendants again seek summary judgment. In making this second summary judgment motion, without leave of this court, defendants do not make "a showing of newly discovered evidence or other sufficient cause" (Ralston Purina Company v. Arthur G. McKee & Company, 174 AD2d 1060 [4th Dept 1991]), nor do they proffer an intervening appellate decision changing the law in their favor (see Forte v. Weiner, 214 AD2d 397, 398 [1st Dept 1995], mot lv app dism 86 NY2d 885 [1995]; Rosenbaum v. City of New York, 5 AD3d 154 [1st Dept 2004]). This alone warrants denial of defendants' summary judgment motion (see Levitz v. Robbins Music Corporation, 17 AD2d 801 [1st Dept 1962]; In re Foreclosure of 1996 Tax Liens by Proceeding in Rem Pursuant to Article 11 of Real Property Tax Law by County of Jefferson, 309 AD2d 1198 [4th Dept 2003]; Lord Day & Lord, Barrett, Smith v. Broadwall Management, Inc., 187 Misc 2d 518, 519 [Sup Ct, NY Co, Braun, J, 2001], affd 301 AD2d 362 [1st Dept 2003]; Powell v. Trans-Auto Systems, Inc., 32 AD2d 650 [2d Dept 1969]).

To the extent that defendants rely on two cases decided by the First Department subsequent to that court's Shannon decision as underpinnings for a new

summary judgment motion, their reliance is misplaced. In each Matter of Metro-North Commuter Railroad Company [NYS Executive Department Division of Human Rights], 271 AD2d 256 (1st Dept 2000), and Sam v. Metro-North Commuter Railroad, 287 AD2d 378 (1st Dept 2001), the court ruled that the doctrine of collateral estoppel barred a former Metro-North employee from relitigating in court the administrative trial finding that his employment termination was warranted. In neither case did the First Department rule that the Railway Labor Act preempted state claims such as those asserted by plaintiff herein which it expressly found do not require interpretation of the applicable collective bargaining agreement (see Shannon v. MTA Metro-North Railroad, supra, 269 AD2d 218).

As far as this court can discern, the only ground for summary dismissal ostensibly articulated in the supporting affidavit is that plaintiff's claims amount to nothing more than contract disputes already resolved by the National Railroad Adjustment Board, which has "final and binding" authority over such disputes. In their legal memoranda, defendants again press the preemption argument raised in federal court and their answer and first motion for summary judgment in this court. These arguments have been considered and explicitly rejected by the First Department (id.) and two federal courts (Shannon v. MTA Metro-North Railroad, supra, 952 F Supp at 180-181 and 915 F Supp at 593).

To the extent that defendants seek summary judgment on tangential grounds not previously rebuffed, these too are unavailing. On defendant's motion for summary judgment, the court is "required to accept the plaintiffs' pleadings ... as true, and [its]

decision 'must be made on the version of the facts most favorable to ... [plaintiff]'" (McLaughlin v. Thaima Realty Corp., 161 AD2d 383, 384 [1st Dept 1990]; see also Hotopp Associates, Ltd. v. Victoria's Secret Stores, Inc., 256 AD2d 285 [1st Dept 1998]). Furthermore, a plaintiff is not required to prove his claim in order to survive defendants' motion for summary judgment dismissing the complaint. A plaintiff's burden to prove his claim at trial should not be confused "with the burden of any movant to demonstrate entitlement to summary judgment" (Cadieux v. D.B. Interiors, Inc., 214 AD2d 323 [1st Dept 1995]). The burden is on the moving party, in this case defendants, to "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (Winegrad v. New York University Medical Center, 64 NY2d 851, 853 [1985]; Zuckerman v. City of New York, 49 NY2d 557 [1980]). Defendants have not met this burden.

At this point, having taken the time to review defendants' voluminous and meritless submissions on this motion, the court is forced to conclude that the sole reason for such a motion is to protract this litigation yet again, placing defendants squarely on sanctionable territory (compare Hapworth Medical Services, P.C. v. Kress, 218 AD2d 575 [1st Dept 1995]). Since plaintiff has not cross-moved for sanctions, the court will forego exploration of such fertile ground at this time. However, defendants are hereby put on notice that any further attempt to relitigate at the trial level matters already decided at the appellate level will trigger an immediate sanctions hearing (see 22 NYCRR § 130-1.1[d]; Bruckner v. Jajtor Apartments Co., 147 Misc 2d 796, 798-799 [Civ Ct, Queens Co, D Goldstein, J, 1990]).

This constitutes the judgement and order of the court.

Dated: June 8, 2006

ENTER:

ROBERT D. LIPPMANN, J.S.C.

HON. ROBERT D. LIPPMANN
J.S.C.

Check one: ■ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

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