APPENDIX IV

(Caballer v. Nidea Corporation)

200 D.P.R. 120, 2018 WL 2107928 (P.R.), 2018 TSPR 65
GRETCHEN CABALLER RIVERA, petitioner,
v.
NIDEA CORPORATION dba ADRIEL TOYOTA, NELSON IRIZARRY, HÉCTOR RUBERT, NICOLÁS AMARO ET. AL., respondents.

In the Supreme Court of Puerto Rico.
Number: CC-2015-0888
Resolved: April 19, 2018
April 19, 2018.

1. LABOR LAW — LABOR RELATIONS LAWS — ACT. NO. 69 OF JULY 6, 1985.
***120** Art. 3 of Act No. 69 of July 6, 1985 (29 LPRA sec. 1323) prohibits an employer from making an adverse employment decision about a person based on their gender.

2. ID. — ILLICIT WORK PRACTICES — SEXUAL HARASSMENT —THE SEXUAL HARASSMENT AT THE WORKPLACE ACT OF 1988.
Art. 3 of Act No. 17 of April 22, 1988 (29 LPRA sec. 155(b)) prohibits any type of unwanted sexual advance in the workplace, requirement of sexual favors and any other verbal or physical conduct of a sexual nature that interferes with a person's work, constitutes an intimidating or offensive environment, or whose acceptance or rejection is used as a basis for employing a person or influencing their working conditions.

3. ID. — Labor Relations Laws — Act No. 69 of July 6, 1985.
Art. 20 of Act No. 69 of July 6, 1985 (29 LPRA sec. 1340) provides that it will be illegal work practice that the employer, labor organization or joint labor-management committee that controls learning programs, training or retraining programs, fire or discriminate against any employee or participant who files a grievance or complaint, that opposes discriminatory practices or participates in an investigation or proceeding against the employer, labor organization or joint labor-management committee for discriminatory practices.

4. ID— ID— ID.
Art. 21 of Act No. 69 of July 6, 1985 (29 LPRA sec. 1341) establishes that every person, employer and labor organization who incurs any of the prohibitions of this law will sustain civil liability.

5. ID — ILLICIT WORK PRACTICES — SEXUAL HARASSMENT — THE SEXUAL HARASSMENT AT THE WORKPLACE ACT OF 1988.
Art. 9 of Act No. 17 of April 22, 1988 (29 LPRA sec. 155(h)) provides that an employer shall be liable when performing any act that results in adversely affecting the employment opportunities, terms and conditions of any person who has opposed the employer's practices that are contrary to the provisions of this law, or who has filed a complaint or claim, has testified, collaborated or has in any way ***121** participated in an investigation, procedure or hearing that is protected under this law.

6. ID - ID - ID - ID.
Art. 11 of Act No. 17 of April 22, 1988 (29 LPRA sec. 155(j)) establishes that every person responsible for sexual harassment in the workplace will incur civil liability.

7.ID. — LABOR RELATIONS LAWS — ACT. NO. 69 OF JULY 6, 1985.
Act No. 69 of July 6, 1985 defines "employer" as any natural or legal person that employs laborers, workers or employees, and the supervisor, staff member, agent, officer, manager, administrator, superintendent, foreman, estate manager or representative of said natural or legal person.

8.ID. — ILLICIT WORK PRACTICES — SEXUAL HARASSMENT — THE SEXUAL HARASSMENT AT THE WORKPLACE ACT OF 1988.
Subsection (2) of Art. 2 of Act No. 17 of April 22, 1988 (29 LPRA sec. 155 (a) (2)) defines "employer" any natural or legal person of any kind, the Government of the Commonwealth of Puerto Rico, including each of its three Branches

and its instrumentalities or public corporations, municipal governments and any of its municipal instrumentalities or municipal corporations, whether for profit or not, employing persons through any kind of compensation and their agents and supervisors. It also includes workers' organizations and other organizations, groups or associations in which employees with purpose of managing with employers the terms and conditions of employment, as well as employment agencies.

9. ID - ID - ID - ID.
Just as Act No. 69 of July 6, 1985, Act No. 17 of April 22, 1988 contains provisions in which "Employer" must be interpreted in a limited way. Clearly, the legislator sometimes used the concept "employer" to refer only to the supervisor as the employer. In these contexts, agents and supervisors are excluded, as the law refers to duties that correspond to the supervisor or to acts that can only be committed by him. Thus, the responsible subject varies depending on the proscribed behavior. That difference is crucial when analyzing retaliation provisions.

10. ID - ID - ID - ID.
In sexual harassment, the author is always the one who performs the acts. Personal action against the harasser is due to the fact that he committed the acts, and the action against the employer is because he knew or should have known about the situation and did not take the steps to correct it. * 122

11. ID - ID - ILLICIT EMPLOYER PRACTICES - RETALIATION AGAINST EMPLOYEE FOR OFFERING TESTIMONY OR FILING COMPLAINTS.
Retaliation acts always constitute actions committed by the employer as an employer (actual employer). When it comes to retaliation, a supervisor, officer, administrator or agent carries out actions under the power conferred upon him by the actual employer. The actual employer is the only author, because the acts of retaliation are his, regardless of who carried them out on his behalf or following his instructions. He is responsible because, ultimately, it is he who has the power to decide the work conditions of an employee.

12. ID - ID - RESPONSIBILITY FOR ACTS OF SUPERVISING EMPLOYEES OR OTHERS.
The agent is the person with such absolute authority to make decisions on behalf of the employer, who acts as an alter ego of the employer and is equivalent to an action taken by the actual employer, for all practical purposes. It is that degree of authority that grants an agent the power to take adverse actions against an employee because, to be able to carry them out, he must have power over the aggrieved employee.

13. ID - ID - ILLICIT EMPLOYER PRACTICES - RETALIATION AGAINST EMPLOYEE FOR OFFERING TESTIMONY OR FILING COMPLAINTS.
Discriminatory actions from one person without control over the employment of another could be acts amounting to harassment or discrimination. On the other hand, those same acts performed against a subordinate, after he has presented a complaint could constitute retaliation. In that sense, the power relationship is crucial, and that power always comes from the actual employer, even when an agent or supervisor has full freedom to exercise it. It is different in the case of sexual harassment, since any person can sexually harass another, regardless of the degree of control or authority they hold.

14. ID - ID - ID - ID.

The essentials to determine the imposition of liability for acts of retaliation under the protection of Acts No. 69 of July 6, 1985 and No. 17 of April 22, 1988 is, in the end, who has the capacity to commit the proscribed act. The responsibility lies with the entity with the true capacity to retaliate. Thus, the employer, as the subject with full control of the employee's employment status, will be responsible for the conduct of his agents, according to the law.

Synopsis
WRIT OF CERTIORARI of *Troadio González Vargas, Sol de Borinquen Cintrón Cintrón* and *Mirinda Y. Vicenty Nazario,* Js. of the Court of Appeals, which confirmed the partial sentencing issued by the Court of First Instance that determined that the allegations of the complaint do not prove that Mrs. Gretchen Caballer Rivera is entitled to any remedy against Mr. Héctor Rubert and Mr. Nicolás Amaro. *The determination of the Court of Appeals is confirmed. The intermediate appellative forum acted correctly in resolving that there is no cause for personal action against the agents and supervisors of an employer for acts of retaliation under Acts No. 69 of July 6, 1985 and No. 17 of April*

22, 1988. According to the provisions against retaliation in these statutes, the employer, not his agents and supervisors, responds in his personal capacity. The case is returned to the Court of First Instance so that the proceedings continue in accordance with this ruling.

Rafael A. Ortiz-Mendoza and José J. Nazario de la Rosa, lawyers of the petitioner; *Victor M. Rivera Torres*, of the firm *Rivera Colón, Rivera Torres & Ríos Berly*, lawyer of Nivea Corporation, respondent.

ASSOCIATE JUSTICE MARTÍNEZ TORRES issued the opinion of the Court.

It is up to us to determine if the agents and supervisors of an employer are personally responsible for acts of retaliation under Acts No. 69 and No. 17. For the reasons set forth below, we resolve that our legislation does not provide for it.

I

Mrs. Gretchen Caballer Rivera was employed by Nidea Corporation DBA Adriel Toyota (Nidea) from June 18, 2012 until January 8, 2014. On May 23, 2014, she filed a complaint against Nidea and Mr. Nelson Irizarry, Mr. Héctor Rubert and Mr. Nicolás Amaro for sexual harassment in the workplace, discrimination based on gender, retaliation and unjustified dismissal. In the complaint, Mrs. Caballer Rivera argued that she had cause of action for protection under Acts No. 115, No. 69 and No. 17, among other legal provisions. She alleged that in 2013 she started to be sexually harassed by Mr. Irizarry, who was the dealership's financing manager. She stated that Mr. Irizarry imposed that she submit to his sexual approaches as a condition of her employment. She stated that once she ***124** asked Mr. Irizarry to desist from his actions, he started a pattern of workplace harassment and retaliation against her. She also stated that the co-defendants Héctor Rubert (general manager of "Adriel Auto" in Barranquitas) and Nicolás Amaro (owner of Nidea) retaliated against her when she complained about the conduct of sexual harassment carried out by Mr. Irizarry. She also included Nidea in her retaliation claim, as her employer.

After several procedural actions, on June 20, 2014, Mr. Rubert and Mr. Amaro filed a motion for dismissal in which they claimed that they were not civilly liable, because they did not incur in acts of sexual harassment. They argued that, even taking as true the facts alleged by Mrs. Caballer Rivera, the legislation, and in particular Act No. 115, does not provide a cause of action for retaliation against the person who incurs in that conduct, but only against the employer of the employee who files the claim.

On January 8, 2015, the primary forum issued a partial ruling in which it determined that the allegations of the complaint did not show that Mrs. Caballer Rivera has the right to remedy from Mr. Rubert and Mr. Amaro. It said that for a company supervisor, officer or agent to be able to respond civilly in his personal capacity to an employee who has been the victim of sexual harassment, he should have been the author of the harassing behavior, according to *Rosario v. Dist. Kikuet, Inc.*, 151 DPR 634 (2000). On the other hand, it indicated that the Retaliation Act, Act No. 115, states that every cause of action will be filed against the employer. Since Mrs. Caballer Rivera's claim against Mr. Rubert and Mr. Amaro was only for acts of retaliation, the forum of first instance dismissed the complaint against them under Rule 6.1 of Civil Procedure, 32 LPRA ***125** Ap. V. Petitioner Caballer Rivera requested the reconsideration of the decision. The court denied the petition.

In disagreement, Mrs. Caballer Rivera filed a petition for *certiorari* before the Court of Appeals. She claimed that the Court First Instance wrongly determined that she had no right to remedy from Mr. Rubert and Mr. Amaro, not only under Act No. 115, but also under other labor laws, such as Acts No. 69 and No. 17.

The intermediate appellative forum reiterated the analysis of the primary forum. It notified a sentence confirming the partial sentence of the Court of First Instance. Subsequently, they denied the petition for a motion for reconsideration filed by Mrs. Caballer Rivera.

Unsatisfied, on October 22, 2015, Mrs. Caballer Rivera filed a petition for *certiorari* before us. She pointed out that the Court of Appeals erred in determining that she had no right to remedy from Mr. Rubert and Mr. Amaro according to Acts No. 115, No. 69 and No. 17, since they did not incur in any acts of sexual harassment.

Once the *certiorari* petition was filed, we issued an order for the responding party to show cause for which we should not revoke the intermediate appellative forum. After their appearance, we shall now issue a decision in this appeal.

II

[1] Act No. 69 of July 6, 1985, 29 LPRA sec. 1321 et seq., was adopted in our legislation to specifically prohibit the discrimination in the workplace based on gender. Art. 3 of this law, 29 LPRA sec. 1323, prohibits an employer from making an adverse employment decision about a person based on their sex. ***126**

[2] On the other hand, sexual harassment in the workplace is prohibited by Act No. 17 of April 22, 1988, 29 LPRA sec. 155 et seq. This statute was adopted to strengthen the current legislation on sexual harassment so that this particular aspect of discrimination based on sex was expressly prohibited and it was clearly established as public policy. The Joint Report of Senate Bill 1437, 10th Legislative Assembly, 4th Ordinary Session (March 23, 1988), p. 9. Art. 3 of this measure, 29 LPRA sec. 155 (b), prohibits any type of unwanted sexual approach in the workplace, the requirement of sexual favors and any other verbal or physical conduct of a sexual nature that interferes with the work of a person, constitutes an intimidating or offensive environment, or which acceptance or rejection is used as the basis to employ a person or influence their working conditions.

These laws of a compensatory nature are part of a legislative framework aimed at implementing the public policy of the State against discrimination based on sex. *Suarez Ruiz v. Figueroa Colón, 145 DPR 142, 148-149 (1998).* To ensure its effectiveness, both laws impose affirmative duties towards the employer. They also contain specific provisions that prohibit retaliation. The prohibitions against retaliation serve to imprint effectiveness on these statutes and ensure that the employer cannot use coercion, intimidation or the financial need of the victim of discrimination or sexual harassment to prevent action against him.

[3] Art. 20 of Act No. 69, 29 LPRA sec. 1340, states that

> it will be illegal work practice that the employer, labor organization or joint labor-management committee that controls learning, training or retraining programs, including job training programs, fire or discriminate against any employee or participant ***127** who files a grievance or complaint or opposes discriminatory practices or participates in an investigation or proceeding against the employer, labor organization or joint labor-management committee for discriminatory practices.

[4] To establish civil liability for violating the provisions of Act No. 69, Art. 21, 29 LPRA sec. 1341, states

> that any person, employer and labor organization as defined in this chapter, that incurs any of the prohibitions
>
> (a) Will be rendered liable to civil action. [...]

[5] On the other hand, Art. 9 of Act No. 17, 29 LPRA sec. 155(h), states the following:

> An employer will be liable under the provisions of secs. 155 to 155m of this title when performing any act that results in adversely affecting the employment opportunities, terms and conditions of any person who opposed the employer's practices that are contrary to the provisions of secs. 155 to 155m of this title, or who has filed a complaint or claim, has testified, collaborated or in any way participated in an investigation, procedure or hearing under secs. 155 to 155m of this title.

[6] Then, to establish civil liability for violating the provisions of this measure, Art. 11 of Act No. 17, 29 LPRA sec. 155(j), states that "any person responsible for sexual harassment in the workplace, as defined in secs. 155 to 155m of this title, will be rendered liable to civil action".

III

The controversy in this case requires us to evaluate if the legislator intended to make an employer's agents and supervisors personally liable for acts of retaliation under Acts No. 69 and No. 17. Therefore, we must determine

whether, the concept of "employer" must be interpreted as to include agents, officers and supervisors among other persons who are part of the company with respect to provisions ***128** on retaliation in these statutes.

[7] Act No. 69 defines "employer" as any natural or legal person that employs laborers, workers or employees, and the supervisor, staff member, agent, officer, manager, administrator, superintendent, foreman, estate manager or representative of said natural or legal person. Act No. 69, 29 LPRA sec. 1322.

This definition is broad. However, as indicated in Art. 2 of this law, the definitions apply "for the purpose of this chapter except when they are evidently incompatible with its purposes". 29 LPRA sec. 1322. Therefore, whenever the law mentions "employer", it does not always refer to the same thing. In each article mentioning "employer", the nature of the liability or the imposed prohibition must be evaluated to determine to which components of that broad definition the responsibility or prohibition applies.

[8] On the other hand, subsection (2) of Art. 2 of Act No. 17, 29 LPRA sec. 155(a)(2), defines "employer" as

> [...] any natural or legal person of any kind, the Government of the Commonwealth of Puerto Rico, including each of its three Branches and its instrumentalities or public corporations, municipal governments and any of its municipal instrumentalities or municipal corporations, whether for profit or not, employing persons through any kind of compensation and their agents and supervisors. It also includes workers' organizations and other organizations, groups or associations in which employees with purpose of managing with employers the terms and conditions of employment, as well as employment agencies.

[9] Just as Act No. 69, Act No. 17 contains provisions in which "employer" must be interpreted in a limited manner. For example, through Art. 6, *** 129** 29 LPRA sec. 155(e), this statute imposes liability on the employer "for acts of sexual harassment among employees in the workplace if the employer or his agents or his supervisors knew or should have been aware of such conduct, unless the employer proves that he took immediate and appropriate action to correct the situation". Likewise, Art. 10, 29 LPRA sec. 155(i), imposes on the employer the duty of keeping the workplace free from sexual harassment and intimidation, as well as giving adequate promotion to its policy against harassment in the workplace, and establish adequate and effective internal procedures to handle harassment claims.

Clearly, the legislator sometimes used the term "employer" to refer only to the employer as the employer. In these contexts, agents and supervisors are excluded, as the law refers to duties that correspond to the employer or to acts that can only be committed by him. Thus, the responsible subject varies depending on the proscribed behavior. That difference is crucial when analyzing retaliation provisions.

IV

In *Rosario v. Dist. Kikuet, Inc.*, supra, the controversy revolved around whether under the Acts No. 69, No. 17 and No. 100 of June 30, 1959, 29 LPRA sec. 146 *et seq.*, the owner and supervisor of a company could personally respond for the acts of sexual harassment he allegedly committed. There we resolved that a supervisor was the "employer" and that, therefore, there was cause for personal action against him for his own acts of sexual harassment. This conclusion was based, in part, on an extensive interpretation of language in Art. 11 of Act No. 17, *supra*. That provision states that "any person responsible for sexual harassment in the ***130** workplace, as defined in secs. 155 to 155m of this title, will be rendered liable to civil action". Id.

The Court also based its determination on the fact that it intended to prevent, on one hand, that the actual employer - that is, the owner of the company — be solely responsible for acts of sexual harassment performed by its supervisors, officers, administrators and agents, and on the other hand, give them immunity despite being the direct perpetrators of the damage. *Rosario v. Dist. Kikuet, Inc.*, supra, pp. 644–645.

On that occasion, it was not necessary for us to perform an analysis regarding the other prohibitions established by the different articles of Act No. 17, since the particular facts of *Rosario v. Dist. Kikuet, Inc.*, supra, were exclusively about a conduct that constitutes sexual harassment. Thus, it was not established that this extensive interpretation of Art. 11 applied in the same way to the provision about retaliation in Act No. 17. Therefore, for the purpose of applying the rules of *Rosario v. Dist. Kikuet, Inc.*, supra, in the present case, we must distinguish between acts of sexual harassment and acts of retaliation.

[10] In sexual harassment, the author is always the one who performs the acts. Personal action against the harasser is because he committed the acts, and the action against the employer is because he knew or should have known about the situation and did not take measures to correct it.

[11] In contrast, acts of retaliation always constitute actions committed by the employer as employer (actual employer). When it comes to retaliation, a supervisor, officer, administrator or agent carries out actions under the power conferred upon him by the actual employer. The actual employer is the only author, because the acts of reprisal are his, regardless of who carried them out on his behalf or by following his instructions. It could not be otherwise because, other than sexual harassment, the reasons or individual interests of the agent do not alter the analysis. What is ***131** relevant is that the agent is exercising the power that his employer delegated unto him. The latter is liable because "ultimately, it is the employer who has the power to decide the working conditions of an employee". *Santiago Nieves v. Braulio Agosto Motors,* 197 DPR 369, 380 (2017).

[12] Our reasoning finds support in the Joint Report of Act No. 17, which provides that

> [...] *the agent is the person with such absolute authority to make decisions on behalf of the employer that constitutes an alter ego of this and for all practical purposes is equivalent to a performance from the employer himself.* [...] [A] degree of control or authority of the nature described above is necessary so that he can be considered as an agent. (Emphasis added). Joint Report of the Senate Bill 1437, *supra*, p. 13.

[13] It is that "degree of control or authority" that give an agent the faculty to take actions that have an adverse effect on the employee because to carry them out, (the agent) must have power over the aggrieved employee. Discriminatory actions from one person without control over the employment of another could be acts amounting to harassment or discrimination. But those same acts performed against a subordinate, after this subordinate has filed a complaint, could constitute retaliation. In that sense, the power relationship is crucial. This power always comes from the actual employer, even when an agent or supervisor has full freedom to exercise it.

It's different in the case of sexual harassment. Any *person* can sexually harass another in a work environment, regardless of the degree of control or authority they hold.

[14] In *Santiago Nieves v. Braulio Agosto Motors*, supra, we answered the question of whether Act No. 115 of December 20, 1991, 29 LPRA secs. 194 et seq., allows a cause of action of a personal nature against the owner of a company and its President, for committing acts of *** 132** retaliation against an employee. No reasonable analysis of the ruling in that case would lead us to conclude that the imposition of civil liability on "any person" in Acts No. 69 and No. 17 extends to the provisions against retaliation in these same laws. The main distinction we make in *Santiago Nieves v. Braulio Agosto Motors,* supra, between Act No. 17 and Act No. 115 to differentiate it from the ruling in *Rosario v. Dist. Kikuet, Inc.*, supra, was not limited to the textual issue of "any person" or "any employer." The bottom line is, ultimately, who has the ability to commit the prohibited act. With this interpretation "it is ensured that the responsibility taken into account rests with the entity with the true capacity to retaliate". *Santiago Nieves v. Braulio Agosto Motors*, supra, p. 383. Thus, "the employer, as the subject with full control over the employee's employment status, will be liable under the law for the conduct of its agents". Id.

In this case, Nidea is the employer of Mrs. Caballer Rivera for the purpose of filing a civil claim for retaliation according to Acts No. 69 and No. 17. Since Mr. Rubert and Mr. Amaro are agents of Nidea, claims for retaliation against them do not proceed.

V

For the reasons set forth above, *the determination of the Court of Appeals is confirmed. The intermediate appellative forum acted correctly in resolving that there is no cause for personal action against the agents and supervisors of an employer for acts of retaliation under Acts No. 69 and No. 17. According to the provisions against retaliation in these statutes, the employer, not his agents and supervisors, responds in his personal capacity. The case is returned to the Court of First Instance so that the proceedings continue in accordance with what was resolved here.* ***133**

Presiding Judge Oronoz Rodríguez issued a dissenting opinion, which was shared by Associate Judge Rodríguez Rodriguez. Associate Judge Rivera García issued a dissenting opinion. Associate Judge Estrella Martínez did not intervene.

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Dissenting opinion issued by Presiding Judge Oronoz Rodríguez, which was shared by Associate Judge Rodríguez Rodriguez

A majority in this Court resolved that it is prohibited to file a claim under Acts No. 69 of July 6, 1985 and No. 17 of April 22, 1988 against an employer's agent, in his personal capacity, when he commits acts of retaliation. In doing so, it ignores the letter of the law and its interpretative jurisprudence. It also protects the actor who retaliates with civil impunity. On the grounds expressed below, I dissent.

I

Mrs. Gretchen Caballer Rivera sued Nidea Corporation and Mr. Nelson Irizarry, Mr. Héctor Rubert and Mr. Nicolás Amaro. She claimed that, after working for several years for Nidea Corporation, she was unfairly dismissed and that during the years she worked she was subjected to sexual harassment, discrimination on the grounds of sex and retaliations by the defendants. Essentially, she claimed that, while serving as Sales Executive of the vehicle dealership "Adriel Auto" in Barranquitas, she was the victim of sexual harassment by co-defendant Nelson Irizarry (manager in charge of financing). In addition, she argued that codefendants Héctor Rubert (general manager of "Adriel Auto" in Barranquitas) and Nicolás Amaro ***134** (owner of Nidea Corporation) retaliated against her when she complained about the conduct of sexual harassment carried out by Mr. Irizarry.

The codefendants Rubert and Amaro requested the dismissal of the claims presented against them. According to them, even taking as true the facts alleged by the complainant, the legislation does not allow action against the person who incurs in acts of retaliation, but only against the actual employer of the plaintiff employee. In addition, they argued that, if there is no claim of sexual harassment against them, the dismissal of the complaint proceeds.

The Court of First Instance accepted the request and dismissed the complaint regarding defendants Rubert and Amaro. It concluded that Acts No. 115-1991 and No. 17-1988 only render the employer liable for civil action, and not its agents nor officers in their personal capacity. It also mentioned that, as an exception, this Court in *Rosario v. Dist. Kikuet, Inc.*, 151 DPR 634 (2000), imposed civil liability on the owner of a company for its own acts of sexual harassment. According to these regulations, the primary forum concluded that the only scenario in which codefendants Rubert and Amaro could be responsible would be if they had been the perpetrators of the harassment. Since Mrs. Caballer Rivera only attributed acts of retaliation to the codefendants in their personal capacity, the forum of instance dismissed the complaint against them.

In disagreement, Mrs. Caballer Rivera appealed the sentence. She noted that the primary forum erred in determining that she was not entitled to any remedy from Rubert and Amaro under Act No. 115-1991, nor any other labor laws, such as Acts No. 69 of July 6, 1985 and No. 17 of April 22, 1988. However, the Court of Appeals confirmed the opinion of the primary forum.

Still in disagreement, Mrs. Caballer Rivera filed an appeal for *certiorari* before this Court. Her request was examined, and we issued an order for the defending party ***135** to show cause for which we should not revoke the intermediate appellative forum.

II

The Constitution of Puerto Rico recognizes human dignity as an inviolable right. From that essential guarantee derives specific rights such as the protection of privacy and the anti-discrimination clauses enshrined in our Bill of Rights. Art. II, Secs. 1 and 8, Const. ELA, LPRA, Volume 1. See also *Albino v. Ángel Martínez, Inc.*, 171 DPR 457, 470 (2007). In compliance with its ministerial duty to protect these constitutional guarantees, the Legislative Assembly adopted a legal scheme of compensatory nature in the labor context. *Suarez Ruiz v. Figueroa Colón*, 145 DPR 142,

148-149 (1998). This process seeks to implement the public policy of the State against discrimination and other undesirable practices, establishing civil liability and sanctions. Id.

In keeping with the foregoing, Acts No. 69 of July 6, 1985 (29 LPRA sec. 1321 *et seq.*) And No. 17 of April 22, 1988 (29 LPRA sec. 155 *et seq.*) prohibit, respectively, discrimination based on sex and sexual harassment in the workplace.[1] These laws specifically define what constitutes the proscribed substantive conduct, either because it occurs in the workplace or because it is associated with the environment or working conditions. To this effect, Art. 3 of Act No. 69 prohibits making an adverse employment decision against a person because of his or her sex. 29 LPRA sec. 1323. On the other hand, Art. 3 of the Act No. 17 prohibits sexual approaches in the workplace that interfere with a person's work, that constitute an intimidating or offensive environment ***136**, or whose acceptance or rejection is used as the basis for employing or influencing the working conditions of a person. 29 LPRA sec. 155b.

In addition, these laws establish additional prohibitions, as well as preventive and affirmative duties, to feasibly eradicate the proscribed substantive conduct and, therefore, effectively protect the rights involved.[2] Hence, for example, that both laws prevent an employer from retaliating against an employee who: (1) files a complaint or (2) initiates or participates in any investigation against the employer for discriminatory or harassing practices. Art. 20 of Act No. 69, *supra*, 29 LPRA sec. 1340; Art. 9 of Act No. 17, *supra*, 29 LPRA sec. 155h. See also *Cintron v. Ritz Carlton*, 162 DPR 32 (2004) (where it was recognized that Act No. 69 provides a cause for retaliation).

Thus, the Retaliation Law, Act No. 115-1991 (29 LPRA sec. 194 *et seq.*), is not the only statute that protects employees against acts of retaliation. Acts No. 69 and No. 17 also provide similar causes of action to the extent that the substantive conduct imputed is regulated by these laws. *S.L.G. Rivera Carrasquillo v. AAA*, 177 DPR 345, 365 (2009) ("In Puerto Rico, in addition to Act No. 115 and Act No. 80, there are other local laws that protect workers from retaliation by their employers"). See also, C. Zeno Santiago ***137** and VM Bermúdez Pérez, *Labor Law Treaty*, San Juan, Pubs. JTS, T. I, 2003, p. 361. Through these provisions, the legislator effectively enforced the rights and protections established in these labor laws.[3] This, then, without such vigorous protection, the party harmed by circumstances of discrimination based on sex or sexual harassment would not be in a position to really enforce their rights.

III

A. This Court has previously faced the question of whether, when proscribing certain conduct in the workplace, the agents of an employer who incur that behavior respond in their personal character. This controversy is mostly caused by two reasons. First, due to the comprehensive way in which labor laws usually define the concept of *employer*, thus including its agents and supervisors,[4] and second, by the particular language that ***138** is used at the time of imposing civil liability, since sometimes it is imposed on "any person", while in others it is imposed on the "employer".

In particular, this Court has expressed itself twice on this controversy. The first occasion was in *Rosario v. Dist. Kikuet, Inc.*, supra, where the question was answered if, under Acts No. 17, No. 69 and No. 100 of June 30, 1959, an owner and a supervisor of a company responded in her personal nature for sexually harassing an employee. The second occasion occurred recently, in *Santiago Nieves v. Braulio Agosto Motors*, 197 DPR 369 (2017), where the dilemma was whether, under the cloak of Act No. 115-1991, a company owner responded personally for his own acts of retaliation.

In *Rosario v. Dist. Kikuet, Inc.*, supra, the defendant questioned the viability of a personal action. He argued that "'[t]he doctrine adopted [by the Legislative Assembly] was that the employer responds [exclusively] for the discriminatory acts committed by his employees, agents and supervisors', so that they do not respond for such acts even when they are committed by themselves. " (Square brackets in the original and emphasis removed). Id., pp. 641–642.

However, this Court used as argument the comprehensive definition of *employer* in Acts No. 69, No. 17 and No. 100 to resolve otherwise. Thus, it determined ***139** that, to the extent that the civil responsibility for the conduct proscribed under these laws fell on the employer, and that in turn the definition of employer encompassed supervisors, administrators and agents, the latter responded in their personal capacity for acts of sexual harassment committed by them.[5]

Apart from finding that the definition of employer met the "unequivocal intention" of the Legislative Assembly to hold personally liable those who commits acts of sexual harassment, this Court also considered other criteria. *Rosario v. Dist. Kikuet*, Inc., supra, pp. 643–645. Among these, it noted that it would be a misinterpretation to interpret that the legislator only wanted to hold the actual employer liable for acts of discrimination or sexual harassment, giving immunity to the direct perpetrators of the damages caused. This Court also pointed out that Act No. 17 not only comprehensively defines the term "employer", but also provides that "*any person* responsible for sexual harassment in the workplace [...] will incur civil liability". (Square brackets and emphasis on the original). Id., p. 645.

In *Santiago Nieves v. Braulio Agosto Motors*, supra, the fundamental controversy was practically identical, but the conduct in question and the legal basis referred to varied. This Court then had to examine whether Act No. 115-1991 allowed a personal cause of action against the owner of a company and its president, who allegedly retaliated against the employee. In interpreting Act No. 115-1991, this Court did not resort to the definition of *employer*, as it did in *Rosario v. Dist. Kikuet, Inc.*, supra, to determine whether personal liability proceeded. The opinion of a Majority of this Court then was that according to a structural analysis of Act No. 115-1991, it should be understood that the comprehensive definition of employer ***140** only implies that the real employer responds *vicariously* for the actions of his agents. *Santiago Nieves v. Braulio Agosto Motors*, supra, pp. 378–379. Thus, the ruling of this Court was different than its ruling in *Rosario v. Dist. Kikuet, Inc.*, supra.[6]

From that understanding, *Santiago Nieves v. Braulio Agosto Motors*, supra, ruled that Act No. 115-1991 does not provide a personal cause of action for acts of retaliation. However, at the same time, it recognized the possibility of personally holding the agents of an employer liable under other labor laws. Thus, taking part of the analysis of *Rosario v. Dist. Kikuet, Inc.*, supra, in *Santiago Nieves v. Braulio Agosto Motors*, supra, a Majority of this Court compared the specific articles of the labor laws that establish the civil liability compensation process. In this way, it distinguished those laws that impose civil liability on ""any person" vis a vis those that hold the "employer "merely responsible. *Santiago Nieves v. Braulio Agosto Motors*, supra, pp. 379-380. It did not rule out that, under the protection of the first group, any person who commits the proscribed conduct was personally liable but found that Act No. 115-1991 was in the second group because it lacked a homologous disposition. Id.

B. In interpreting existing labor laws, this Court must provide greater consistency between them, rather than dissonance. *Santiago Nieves v. Braulio Agosto Motors*, supra, p. 388 (Opinion partially agreeing and partially dissenting from Presiding Judge Oronoz Rodríguez).

With the above statement in mind, it should be noted that Acts No. 69 and No. 17 share a similar structure broadly composed of four areas: (1) statement ***141** of public policy;[7] (2) definition of concepts; (3) prohibitions and duties, and (4) determination of liability and sanctions. Likewise, it may be noted that these laws share three specific elements for the purposes of this case.

First, both laws provide a comprehensive definition of the concept of *employer*, so its provisions extend to the acts committed by officers, supervisors and other agents of the employer. Second, both laws prohibit an employer, as defined, from retaliating against an employee who initiates a procedure or complaint under what the laws themselves prohibit. And third, both laws provide that any person who engages in the conduct prohibited by them shall be civilly liable.

1. Art. 2 of Act No. 69 provides that the concept of *employer* includes "*any natural or legal person* that employs laborers, workers or employees, and the *supervisor, staff member, agent, officer, manager, administrator, superintendent, foreman, estate manager or representative* of said natural or legal person". (Emphasis added). 29 LPRA sec. 1322 (2).

Then, as part of the series of prohibitions and outlawed practices, Art. 20 provides the following:

> It will be illegal work practice that the employer, labor organization or joint labor-management committee that controls learning programs, training or retraining programs, including job training programs, fire or discriminate against any employee or participant who files a grievance or complaint, that opposes discriminatory practices or participates in an investigation or proceeding against the employer, labor organization or joint labor-management committee for discriminatory practices. 29 LPRA sec. 1340.

Finally, Art. 21 establishes the civil liability that comes from violating the prohibitions in the law in the following manner: ***142** "*Any person, employer* and labor organization *as defined in this chapter, who commits any of the prohibitions thereof: (a) will incur civil liability* ". (Emphasis added). 29 LPRA sec. 1341.

2. Art. 2 of Act No. 17 provides that the concept of *employer* includes the following:

> *[A]ny natural or legal person* of any kind, the Government of the Commonwealth of Puerto Rico, including each of its three Branches and its instrumentalities or public corporations, municipal governments and any of its municipal instrumentalities or municipal corporations, whether for profit or not, employing persons through any kind of compensation *and their agents and supervisors*. It also includes workers' organizations and other organizations, groups or associations in which employees with purpose of managing with employers the terms and conditions of employment, as well as employment agencies. (Emphasis added). 29 LPRA sec. 155a(2).

In turn, this law establishes prohibitions and duties, including the following in its Art. 9:

> An employer shall be liable under the provisions of secs. 155 to 155m of this title when performing any act that has the effect of adversely affecting the employment opportunities, terms and conditions of any person who has opposed the employer's practices that are contrary to the provisions of secs. 155 to 155m of this title, or that has filed a complaint or claim, has testified, collaborated or in any way participated in an investigation, proceeding or hearing sought under secs. 155 to 155m of this title. 29 LPRA sec. 155h.

Finally, Art. 11 establishes the civil liability that proceeds as follows: "*Any person* responsible for sexual harassment in the workplace, *as defined in secs. 155 to 155m of this title, will incur civil liability*". (Emphasis added). 29 LPRA sec. 155j.

C. Having exposed the applicable regulations, it is necessary to analyze whether Acts No. 69 and No. 17 allow actions against the agent of an employer ***143,** in his own personal capacity, for his own acts of retaliation.

In *Rosario v. Dist. Kikuet, Inc.*, supra, this Court ruled that the definition of *employer* under Acts No. 17 and No. 69 was "clear and free from ambiguity," so there was no "need to look beyond the letter in search of legislative intent". Id., p. 643. In light of the circumstances of that case, it was argued that "the definitions of 'employer' include the supervisors, officers, administrators and agents thereof, and invoke the unequivocal intention of the Legislative Assembly to hold them liable for acts of sexual harassment in the workplace when such acts are committed by them ". Id. [8]

The analysis in this case must be similar, considering that it deals with the same laws and, therefore, the same definitions of the concept of employer. On one hand, Act No. 69 includes in its definition of employer the "supervisor,

official, agent, officer, manager, administrator, superintendent, foreman, estate manager or representative". 29 LPRA sec. 1322(2). On the other hand, Act No. 17 provides that its definition of employer includes "its agents and supervisors". 29 LPRA sec. 155a(2). Similarly, both laws prohibit that this employer, as previously defined, from engaging in acts of retaliation, under penalty of civil liability.

In that sense, a consistent analysis with *Rosario v. Dist. Kikuet, Inc.*, supra, leads me to conclude that the same legislative intent found there, by virtue of the clear and broad letter of the law – i.e. to personally hold liable any person who is included in the definition of employer -, applies to the case of record. ***144**

Now, in *Santiago Nieves v. Braulio Agosto Motors*, supra, the legislative intention to hold an employer's agent liable in his personal capacity under another labor law was auscultated elsewhere. There it was suggested that the determining factor was the language used in the articles that specifically impose civil liability, but not the definition of the concept of employer.[9] Thus, Act No. 115-1991, which holds the employer liable for the conduct prohibited there, was with Acts No. 69 and No. 17, which impose civil liability *on any person.*[10]

If, as in *Santiago Nieves v. Braulio Agosto Motors*, supra, a Majority of this Court uses, in this case, the Articles of Acts No. 69 and No. 17 that impose civil liability, it strengthen the conclusion that an employer's agents must be held personally liable. This is because both laws provide that every person who commits the proscribed conduct will respond civilly. For that reason, even as a corollary of the ruling in *Santiago Nieves v. Braulio Agosto Motors*, supra, Acts No. 69 and No. 17 constitute "labor laws in which the legislator created a cause of action against any person who engages in proscribed conduct and not just against the employer." Id., p. 380.

That civil liability of a personal nature would apply against an agent who engages in acts of retaliation, given that such conduct is prohibited by Acts No. 69 and Act No. 17. This, as the scope of civil liability of these laws, even with its scope of personal capacity, is not limited to the substantive conduct prohibited but extends ***145** to the prohibitions and duties provided therein. It is logical that this is so since in these labor laws, the legislator did not merely impose a series of social aspirations, but established prohibitions and binding duties with their respective sanctions.[11]

The legislator also specified that civil liability would proceed for any violation of the provisions of those laws. To that end, it should be noted that Act No. 69 imposes civil liability on the person who incurs "any of the prohibitions" provided for therein. 29 LPRA sec. 1341. For its part, Act No. 17 imposes civil liability on any person who engage in sexual harassment, "as defined in secs. 155 to 155m of this title", thus encompassing the entire environment of conduct that the legislator considered to constitute or promote sexual harassment in the workplace. 29 LPRA sec. 155j.

Therefore, it is necessary to conclude that the comprehensive definitions of *employer*, as interpreted in *Rosario v. Dist. Kikuet, Inc.*, supra, as well as the breadth of articles imposing civil liability, according to the very logic of a Majority in *Santiago Nieves v. Braulio Agosto Motors*, supra, holds personally liable those who infringe the provisions of Acts No. 69 and No. 17.

D. Finally, it is necessary to point out and underline two core issues regarding the majority opinion.

First, as a Majority of this Court points out,[12] Art. 2 of Act No. 69-1985 could limit the extension of the definition of the term "employer" in certain ***146** circumstances insofar as it provides that the statutory definition shall apply "except when it is *manifestly incompatible* with the purposes [of the statute]". 29 LPRA sec. 1322. However, the majority opinion does not advance any argument as to why the application of the statutory definition would be *manifestly incompatible* in this case of retaliation.

Instead, our Legislative Assembly resolved and declared in Act No. 69 that "*the values of equality and freedom expressed in the Constitution* of the Commonwealth of Puerto Rico *constitute the cornerstone of Puerto Rican society.*" (Emphasis added). 29 LPRA sec. 1321. This law proscribes discrimination based on sex in the workplace, and its north is "to ensure strict compliance with the constitutional guarantee that all persons have so that they will not be subjected to discrimination based on their sex." Id. Art. 20 of said Act, for its part, prohibits retaliation against a person who opposes discriminatory practices when seeking help by filing a complaint or grievance, or participating in an investigation or proceeding against the employer. 29 LPRA sec. 1340. Finally, Article 21 imposes civil liability not only on the employer, as defined, but also on "*any person.*" (Emphasis added). 29 LPRA sec. 1341.[13] Therefore, I believe that it is not manifestly incompatible with the purposes of Act No. 69 to impose civil liability on an employer's agent, who violated the rights of the employee, as established by the Legislative Assembly. Therefore, Art. 2 of Act No. 69 should not circumscribe the statutory definition of "employer" in this case. * **147**

Likewise, in Act No. 17, the Legislature resolved and declared as public policy that "sexual harassment in the workplace is a form of sex discrimination and as such *constitutes an unlawful and undesirable practice which infringes against the established constitutional principle that the dignity of the human being is inviolable*". (Emphasis added). 29 LPRA sec.155. It should be noted that, unlike Act No. 69, the application of the definition of "employer" in Act No. 17 is not conditional upon it not being "manifestly incompatible." That said, Act No. 17 also includes the employer's agents in their definition of "employer" and also imposes civil liability on "any person."

Thus, and secondly, the majority opinion suggests that the analysis of this case should not be analogous to that of *Rosario v. Dist. Kikuet, Inc.*, supra, because they are the same laws and definitions, but not the same conduct. To support this position, it distinguishes "between acts of sexual harassment and acts of retaliation."[14] He argues that in the case of sexual harassment, "the perpetrator is always the one who carries out the acts", while in the case of retaliation "the real employer is the only perpetrator, since the acts of retaliation are his own, regardless of who carries them out in his name or following his instructions."[15]

I disagree. Even if the final decision to dismiss an employee or not may fall upon the real employer, the agent ordinarily has the authority to carry out multiple acts that affect that employee's terms and conditions, thus constituting acts of retaliation. The agent can, for example: (1) alter conditions of employment; (2) change the employee's shift to disadvantage him; (3) modify tasks to the detriment of the employee; (4) hinder promotion opportunities, and (5) recommend that the employee be fired. The employer's agent therefore plays * **148** an active role in making decisions against the employee for retaliation. Thus, by characterizing the agent as an *alter ego*, the intention of the legislator was to extend civil liability beyond the real employer. According to the broad text of the law, the legislator personally blamed the agent for being an instrumental actor in the violation of the employee's rights. To conclude otherwise would be to presume that the legislator included redundant language.[16] However, he broadly defined the term "employer" and imposed civil liability on both the "employer" and "any person" under the two laws that are the subject of this case. This, together with the statutory public policy established, must mean something. If there is any doubt, it is a reiterated hermeneutic principle of this Court that

> Puerto Rico's labor legislation is geared toward promoting social justice for the working class, ensuring the greatest protection of their labor rights. Its essence is remedial or restorative. Therefore, *its judicial interpretation must be liberal and broad, so that the objectives that originated it can be achieved. In this interpretative process, any doubt as to the application of a labor legal provision must be resolved in favor of the employee.* (scholium omitted and emphasis added). *Orsini García v. Secretary of the Treasury*, 177 DPR 596, 614–615 (2009). See also: *Figueroa Rivera v. El Telar, Inc.*, 178 DPR 701, 723-724 (2010) (Act No. 80); *S.L.G. Rivera Carrasquillo v. AAA*, supra, p. 363 (Act No. 115); *Cintron v. Ritz Carlton*, supra, p. 39 (2004) (Act No. 60).

IV

In the case of record, the Court of Appeals upheld a primary forum decision dismissing the action on the ground that our legislation does not provide a personal cause of action for retaliation. It determined that a claim of retaliation against ***149** Mr. Rubert and Mr. Amaro did not proceed and that, for that reason, the primary forum acted correctly in dismissing Mrs. Caballer Rivera's action.

The forum reached that conclusion after considering several labor laws invoked by Mrs. Caballer Rivera. As for Act No. 115-1991, the forum concluded that it contains no provision inposing personal liability on an employer's agents for acts of retaliation. That determination fits the logic of *Santiago Nieves v. Braulio Agosto Motors*, supra.

However, the forum also ruled out that other labor laws - such as Acts No. 69 and No. 17 - provide a personal cause of action for acts of retaliation. In doing so, the Court of Appeals interpreted in a limited way *Rosario v. Dist. Kikuet, Inc.*, supra, and reiterated that in that case this Court only granted that the direct perpetrator of the acts of sexual harassment could be held personally liable under those laws.

As discussed, a comprehensive and consistent reading of Acts No. 69 and No. 17, as well as our expressions in *Rosario v. Dist. Kikuet, Inc.*, supra, and *Santiago Nieves v. Braulio Agosto Motors*, supra, leads me to conclude that the intermediate appellative forum erred. Thus, I contend that Acts No. 69 and No. 17 allow an action against an agent of the employer in his personal capacity when he engages in acts of retaliation and perpetuates the damage inflicted on the victim of sexual harassment and sex discrimination. Consequently, Mrs. Caballer Rivera must be able to file an action against Mr. Rubert and Mr. Amaro under those laws and deserves her day in court to prove her allegations. In view of the fact that a Majority resolves otherwise, I disagree. ***150**

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Dissenting opinion issued by Associate Judge Rivera García.

I

I disagree with the decision of the majority of the members of this Court because, as I pointed out in *Santiago Nieves v. Braulio Agosto Motors*, 197 DPR 369 (2017), after analyzing the provisions of Act No. 115-1991, the objectives of laws of this nature did not allow for this outcome. We have repeatedly recognized that labor laws, such as those we had to interpret on this occasion, "are of a remedial nature and have an eminently social and restorative purpose." *Santiago Nieves v. Braulio Agosto Motors*, supra, p. 398 (dissenting and concurring opinion of the Associate Judge Rivera García), referring to Cordero Jiménez v. UPR, 188 DPR 129, 139 (2013), and Acevedo v. PR Sun Oil Co., 145 DPR 752, 768 (1998). In that sense, we are obliged to make a liberal interpretation, in accordance with the principles in which the referred statutes are erected.

From *Rosario v. Dist. Kikuet, Inc.*, 151 DPR 634 (2000), given the reference to "employer", provided in several statutes related to labor laws, we recognized that the definition of "employer" extended to the actual employer as the direct perpetrator of the imputed conduct. Therefore, even though the law referred only to "employer," we found that supervisors, officers, administrators, and agents of the actual employer would also respond. In other words, all of them were immersed in the concept of "employer" for the purpose of actions such as those in the present case. In fact, among other provisions, at that time we analyzed the definition of "employer" established in Act No. 69 of July 6, 1985, as amended, and Act No. 17 of April 22, 1988, as amended, to reach such a conclusion. ***151**

II

In view of the above, I cannot agree with the decision of this Court. The truth is that it results in a contradiction that the interpretation that since its inception this Court made to the term "" employer ", as defined in Act No. 69 and Act No. 17 - applicable in this case -, would include the range of the aforementioned subjects, but that their liability is subsequently limited by means of a restrictive interpretation that is contrary to the legislative intention clearly established in these statutes. I am convinced that the above-mentioned laws establish a cause of action, not only against the actual employer, but against the supervisors, officers, administrators and agents of the actual employer on occasions when, as alleged in the present case, they engage in acts of retaliation when the employee complains that he or she has been the victim of sexual harassment.

Consequently, I dissent and would have revoked the judgment under appeal.

Footnotes

1 Act No. 69 of 6 July 1985 (29 LPRA sec. 1321 et seq.), known as the Sex Discrimination in the Workplace Act; Act No. 17 of April 22, 1988, (29 LPRA sec. 155 et seq.), known as the Sexual Harassment in the Workplace Act.

2 As for affirmative duties, Act No. 69 imposes on the employer the duty to keep records for periods of two years in order to determine whether the employer has engaged in unlawful practice according to the law. 29 LPRA sec. 1335. Also, Act No. 69 requires the employer to publish a compendium of the law itself in a visit place in the business. 29 LPRA sec. 1339. For its part, Act No. 17 imposes on the employer the duty to set out a policy against sexual harassment in the workplace, giving it sufficient publicity and establishing adequate and effective internal procedures to deal with complaints of harassment. 29 LPRA sec. 155i. For a case in which civil liability is imposed for non-compliance with these duties in the context of Act No. 17, see *Albino v. Angel Martínez, Inc.*, 171 DPR 457 (2007). See also *Rosa Maisonet v. ASEM*, 192 DPR 368, 382–383 (2015) (discussing affirmative duties set for in Act No. 17).

3 See Joint Report of Senate Bill 1437, 10th Legislative Assembly, 4th Ordinary Session (March 23, 1988), pp. 16–17 (referring to the cause of action for retaliation as a vital aspect of "make [Act No. 17-1988] effective and ensuring that the employer cannot use coercion, intimidation or economic necessity of the victim of sexual harassment, of a witness or the person who attempted to protect the victim to prevent action against the employer").

4 Act No. 69 defines *employer* as: "*any natural or legal person who employs workers, laborers or employees, and the supervisor, official, agent, officer, manager, administrator, superintendent, foreman, estate manager or representative* of that natural or legal person." (Emphasis added). 29 LPRA sec. 1322(2). Act No. 17 defines *employer* as "*any natural or legal person* of any kind, the Government of the Commonwealth of Puerto Rico, including each of its three Branches and its instrumentalities or public corporations, municipal governments and any of its municipal instrumentalities or municipal corporations, whether for profit or not, employing persons through any kind of compensation *and their agents and supervisors*. It also includes workers' organizations and other organizations, groups or associations in which employees with purpose of managing with employers the terms and conditions of employment, as well as employment agencies." (Emphasis added). 29 LPRA sec. 155a(2). Act No. 115-1991, as amended, defines *employer* as "all employers equally, whether public or private employers, public corporations or any other denomination of employers that exists in the present or is created in the future, *any natural or legal person* of any kind, including the Government of the Commonwealth Puerto Rico, its three Branches and their instrumentalities or public corporations, municipal governments and any of their instrumentalities or municipal corporations, whether for profit or not, employing persons through any kind of compensation *and their agents and supervisors*. It also includes workers' organizations and other private organizations, groups or associations in which employees participate for the purpose of managing with employers the terms and conditions of employment, as well as employment agencies". (Emphasis added). 29 LPRA sec. 194(b). Act No. 100 of June 30, 1959 defines the employer as "*any natural or legal person* employing workers, laborers or employees, and *the supervisor, official, manager, officer, manager, administrator, superintendent, foreman, estate manager, agent or representative* of such natural or legal person. It shall include those agencies or instrumentalities of the Government of Puerto Rico that operate as private businesses or companies". (Emphasis added). 29 LPRA sec. 151(2).

5 See D.M. Helfeld, *Labour Law*, 70 (No. 2) Rev. Jur. UPR 447, 455 (2001) (discussing *Rosario v. Dist. Kikuet, Inc.*, 151 DPR 634 (2000)).

6 See *Santiago Nieves v. Braulio Agosto Motors*, 197 DPR 369, 390 esc. 5 (2017) (opinion of conformity in part and dissenting in part of Judge President Oronoz Rodríguez).

7 The public policy statement of Act No. 69 refers to the importance of equality as the fundamental value of our society and its protection in the context of employment. 29 LPRA sec. 1321. For its part, the public policy statement of Act No. 17 classifies sexual harassment as a form of sex discrimination that violates human dignity. 29 LPRA sec. 155.

8 See also *Ortiz González v. Burger King of Puerto Rico et al.*, 189 DPR 1, 72 (2013) (Judgment), conforming opinion of Associate Judge Rivera García, who mentions that in *Rosario v. Dist. Kikuet, Inc.*, 151 DPR 634 (2000), it was resolved that "the labor laws applicable to the dispute assigned employer liability but did not exempt agents or supervisors from being personally liable for their actions."

9 As I mentioned earlier, with regard to the comprehensive definition of the concept of employer, it was interpreted that its purpose was to vicariously hold the employer liable for the actions of its agents. *Santiago Nieves v. Braulio Agosto Motors*, supra, pp. 378–379.

10 Id., pp. 379–380 ("[T]he civil liability [in Act No. 17-1988] was not confined to the employer but extended to *any person* responsible for the conduct in question"; "[T]he Art. 21 of Act No. 69 [...] expressly recognizes that *any person*, employer or organization that violates its postulates will incur civil and criminal liability" [emphasis added]).

11 See *Rosa Maisonet v. ASEM*, supra, p. 383 (explaining that the public policy of Act No. 17 imposes a series of "measures necessary to fully comply with the [legislative] mandate under penalty of sanctions"); *Cintrón v. Ritz Carlton*, 162 DPR 32, 37–38 (2004) (where the sanctions of Act No. 49 are interpreted as extending to acts of retaliation since that law, "like other labor laws, provides a compensation scheme for the employee when his/her employer incurs in any of the practices prohibited by it" [scholium omitted]).

12 Majority Opinion, p. 128.

13 See *Santiago Nieves v. Braulio Agosto Motors*, supra, p. 380 ("Art. 21 of Act No. 69 [...] expressly recognizes that any person, employer or organization that infringes its postulates will incur civil and criminal liability. This shows that when the Legislative Assembly has wished to extend civil liability beyond the employer, it has expressly provided for it").

14 Majority Opinion, p. 130.

15 Id.

16 R.E. Bernier Santiago and J.A. Cuevas Segarra, *Approval and interpretation of the laws in Puerto Rico*, 2nd ed., San Juan, Pubs. JTS, 1987, Vol. 1, p. 316

VCH
TRANSLATION

TRANSLATOR DECLARATION AND CERTIFICATION

I, Veronique C. Haesebrouck, declare that I am a Certified Court Translator and that I am certified to translate from Spanish to English.

I further declare that to the best of my abilities and belief, this document is a true and accurate translation of the document titled *Caballer Rivera v. Adriel Toyota, 200 D.P.R. 120 (2018)* dated April 19, 2018. The translation includes the full 16-page document.

Prepared and signed on December 19, 2019 in Toa Baja, Puerto Rico

Veronique C. Haesebrouck

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