SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: Part 13

"MARGARET DOE"

Plaintiff,

- against -

BLOOMBERG L.P., MICHAEL BLOOMBERG, and NICHOLAS FERRIS

Defendants.

Index: 28254-2016E
Hon. Fernando Tapia, J.S.C.

DECISION

Plaintiff moves for an order, pursuant to CPLR 2221, granting plaintiff leave to reargue her opposition to defendant Bloomberg's motion to dismiss, granted by Decision and Order entered on December 6, 2017. This is a civil rights violation, employment discrimination, and sexual harassment lawsuit filed by the plaintiff. Plaintiff filed this action against Mr. Bloomberg personally, on the basis that he is the founder of the Company and its President and CEO. Defendant Bloomberg opposes arguing that he did not have any actual involvement or connection to the conduct alleged by the plaintiff.

A CPLR 2221 motion for leave to reargue and renew is in the sound discretion of the court and may be granted only upon a showing "that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." [1] Re-argument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided. [2]

When granting defendant Bloomberg's motion to dismiss, this court misapprehended the New York City Human Rights Law (NYCHRL) when making its earlier decision. It erroneously required the plaintiff to meet all three prongs of the NYCHRL §8-107, as opposed to only one,

[1] *William P. Pahl Equipment Corp. v. Kassis*, 182 AD2d 22, 27 (1st Dept 1992).
[2] *Pro Brokerage Inc. V. Home Ins. Co.*, 99 AD2d 971 (1st Dept. 1984).

which the Court of Appeals made clear in *Zakrzewska v. New School.* [3] On this basis, the court grants plaintiff's motion to reargue.

Defendant Bloomberg brought a motion to dismiss under C.P.L.R. § 3211(a)(7). Subsection (7) provides for dismissal where the plaintiff fails to state the necessary elements of a claim. Specifically, plaintiff has failed to state an aiding/abetting claim and sex discrimination and hostile work environment claim because they were unable to allege Bloomberg knew or participated in the alleged conduct.

Defendant Bloomberg argues that the NYCHRL "does not purport to determine whether any individual may be deemed an 'employer'" by an ownership interest in a business. [4] Instead, they posit, that "plaintiff must show that the individual had 'some minimal culpability' or 'connection to the underlying claim." [5] The plaintiff in her opposition argues that Bloomberg may be held personally liable under the State and City Human Rights Law solely if he is "shown to have any ownership interest or any power to do more than carry out personnel decisions made by others." [6]

In 1991, City of New York expanded the protections under its Human Rights Law to "fight a civil rights counter-revolution that was already restricting civil rights protections on the national level. These reforms never achieved their potential". [7] The amendment reintroduced in NYCHRL under the Restoration Act of 2005 [8] reflected New York City Council's concern that the City's Human Rights Law "has been construed too narrowly." [9] "In particular, through

---

[3] 14 N.Y.3d 469, 479, 481 (2010) (imposes strict liability on the employer where "the offending employee 'exercised managerial or supervisory responsibility' ").
[4] Bloomberg mem, pg. 3.
[5] *Magnotti v. Crossroads Healthcare Mgmt.* LLC, No. 14 CV 6679 (ILG), 2016 WL 3080801, at *2 (E.D.N.Y. May 27, 2016).
[6] *Patrowich v Chem. Bank*, 63 NY2d 541, 542 (1984).
[7] Prof. Craig Gurian, Return to Eyes on the Prize, 33 Fordham Urb LJ at 255 (internal citations omitted).
[8] N.Y.C. Local Law No. 85 of 2005 (Restoration Act).
[9] Restoration Act, supra note 7, § 1.

passage of this local law, the Council seeks to underscore that the provisions of [NYCHRL] are to be construed independently from similar or identical provisions of New York state or federal statutes." [10] The author of the Restoration Act, Professor Gurian noted that "[t]he easy habit of 'dropping the footnote' has led judges to misconstrue provisions of the City Human Rights Law on a regular basis, committing either the sin of failing to bother to read the statute, or the sin of failing to believe what they have read." [11] Granting of this reargument is in part a reflection by this court of these sentiments.

Professor Gurian in his analysis of the failure of the 1991 enactments specifically noted cases that parallel to this subject action.

> **"In Forrest [12], for example, the Court of Appeals, asserting that the provisions of the City Human Rights Law 'mirrored' those of the State Human Rights Law, stated in dicta that, even if the quantum of harassment had been sufficient to be actionable, the defendant would not be liable for its supervisor's harassment under the State Human Rights Law because an 'employer cannot be held liable [under state law] for an employee's discriminatory act unless the employer became a party to it by encouraging, condoning, or approving it.' The court correctly set forth the law insofar as it referred to the State Human Rights Law. It ignored, however, the explicit statutory text of section 8-107(13)(b) of the City Human Rights Law, which provides for three separate and independent circumstances under which an employer shall be liable for the conduct of 'an employee or agent' that is in violation of the relevant employment discrimination provision of the statute. One of these is where 'the employee or agent exercised managerial or supervisory responsibility.' Section 8-107(13)(b)(1) imposes no requirement that the employer encourage, condone, or acquiesce in the conduct. In fact, Totem Taxi [13], one of the cases cited by Forrest for the contrary proposition, was a motivating factor for creating a distinct vicarious liability regime as part of the 1991 Amendments.**
>
> **It is true that there is a provision of the employer liability section that sets forth an affirmative defense which involves pleading and proving the establishment of, and compliance with, 'policies, programs and procedures for the prevention and detection of unlawful discriminatory practices.' This**

---

[10] *Id.*

[11] Gurian, *Return to Eyes on the Prize*, 33 Fordham Urb LJ at 269 (noting the courts failure to heed the expansive legislative intent and accusing the courts of engaging in "rote parallelism" to state and federal laws).

[12] *Forrest v. Jewish Guild for the Blind*, 819 N.E.2d 998, 1007 n.3 (N.Y. 2004).

[13] *In re Totem Taxi, Inc. v. N.Y. State Human Rights Appeal Bd.*, 480 N.E.2d 1075 (N.Y. 1985)

affirmative defense, however, does not apply to the question of liability for the conduct of employees and agents who exercise managerial or supervisory responsibility. It is only relevant to a liability determination in the context of co-employee harassment where the question is whether the employer should have known of the discriminatory conduct and failed to exercise reasonable diligence to prevent such conduct. In other words, the City Council made a different choice in 1991 about liability of supervisors and managers than did the Supreme Court in 1998, but the blinders of rote parallelism prevented the Forrest court from seeing this." [14]

It is clear to this court that under NYCHRL the plaintiff is not required to submit evidence of "some minimal culpability" or "connection to the underlying claim" by the defendant to be successful in her claim. The legislative intent as noted by the drafter of this law did not seek to create such an exacting standard. The mere "managerial or supervisory responsibility" that CEO Bloomberg had over the plaintiff is sufficient basis to succeed on her claim.

It should be noted that the proposition advanced by the lower federal court in *Magnotti* decision has been directly contradicted by other district court decisions that do not require a showing that the defendant participated in the conduct giving rise to the claim. [15] It is evident that the district courts are split on this issue. Bloomberg is not merely an owner or shareholder but is also the CEO of his namesake company. At this stage, as no discovery has taken place, it is unknown the extent of his involvement with the decision-making process at Bloomberg, LLP. It is also undiscovered if Bloomberg had a direct connection if any to the sexual harassment that took place from September 2012 to October 2015. And finally, it is unknown his alleged role if

---

[14] Gurian, *Return to Eyes on the Prize*, 33 Fordham Urb LJ at 270-271 (internal citations omitted).

[15] *See Makinen v City of New York*, 167 FSupp3d 488-489 (SD NY 2016) *revd on other grounds* 2018 WL 546409 (2d Cir 2018) ("If an individual is an employer, Plaintiffs need not show that he participated in the conduct giving rise to the claim.").

any in creating, encouraging, and condoning a culture at Bloomberg, LLP that plaintiff asserts caused her claims of civil rights violation, employment discrimination, and sexual harassment.

"Upon a motion to dismiss, the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, then the motion will fail."[16] Taking the allegations of the complaint as true and resolving all inferences reasonably flowing from those allegations in the plaintiff's favor [17], this court as a matter of law denies Bloomberg's motion to dismiss. Affording the plaintiff, the benefit of every favorable inference and determining whether from the four corners of the complaint it states a cognizable cause of action for aiding/abetting claim under the NYCHRL and sex discrimination/hostile work environment claims under the NYSHRL and NYCHRL, this court finds in the positive. Accordingly, it is

ORDERED that this motion to reargue is granted and, upon reargument, the prior order is vacated and defendant Bloomberg's motion to dismiss with respect to the First, Second and Third Causes of Action are denied.

This constitutes the decision and order of the court.

Dated: September 07, 2018

Bronx, New York

Hon. Fernando Tapia J.S.C.

[16] *Maurillo v. Park Slope U–Haul*, 194 A.D.2d 142, 145, 606 N.Y.S.2d 243;
[17] *See Cron v. Hargro Fabrics, Inc.*, 91 N.Y.2d 362, 366, 670 N.Y.S.2d 973, 694 N.E.2d 56.