To be Argued by:
NIALL MACGIOLLABHUÍ
(Time Requested: 30 Minutes)

Court of Appeals
of the
State of New York

An Individual Described Herein by the Pseudonym
"MARGARET DOE",

Plaintiff-Appellant,

- against -

BLOOMBERG L.P.,

Defendant,

- and -

MICHAEL BLOOMBERG,

Defendant-Respondent,

- and -

NICHOLAS FERRIS,

Defendant.

BRIEF FOR PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

This central issue on this appeal is whether Defendant-Respondent Michael Bloomberg ("Bloomberg") qualifies as an employer under the New York City Human Rights Law (the "City HRL"), and thus is subject to strict liability for the unlawful discriminatory conduct of managers and supervisors in his employ, specifically the sexual harassment of Plaintiff-Appellant Margaret Doe ("Plaintiff") by Defendant Nicholas Ferris ("Ferris").

According to the Appellate Division majority, Bloomberg does not qualify as an employer because Plaintiff did not allege that he encouraged, condoned or approved the specific discriminatory conduct. This conclusion is erroneous; as the dissent below points out, it conflates the definition of "employer" under the City HRL with the bases for employer liability. The City HRL sets forth specific standards for establishing an employer's liability for the underlying discriminatory conduct of employees and agents. On the other hand, the standard for employer liability under the New York State Human Rights Law (the "State HRL") is a judicial creation. In the words of the dissent, the majority would graft the liability standard (for all employers) under the State HRL – namely, whether the employer has "encouraged, condoned or approved" the underlying discriminatory conduct – onto the City HRL (but only for certain individual employers, i.e., where there is also a

corporate employer). The perverse result is that certain individuals, such as Bloomberg, must meet an initial, judicially created, standard of liability to qualify as employers under the City HRL, and then meet a different, statutorily based, standard of liability to be held responsible for the discriminatory conduct of their agents and employees. Adding to the perversity, the threshold standard is higher than the statutory standard (strict liability) that applies to managers and supervisors, rendering the latter standard superfluous.

In *Patrowich v. Chemical Bank*, 63 N.Y.2d 541 (1984), this Court held that an individual qualifies as an "employer" for purposes of the State HRL if shown to have an ownership interest in a corporate employer or the power to do more than carry out personnel decisions made by others. The stated purposes of the City HRL are uniquely broad and remedial and all its provisions must be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible." *Albunio v. City of New York*, 16 N.Y.3d 472, 477–478 (2011). The dissent below found that the foregoing definition of an individual employer in *Patrowich* sufficed for purposes of the City HRL, considering the mandate to construe its provisions as broadly as possible consistent with its liberal aims.

Alternatively, this Court could adopt the "economic reality" test used in the context of federal employment laws. Under that test, evidence that

an individual is the owner of a company or occupies an executive position is insufficient by itself to subject the individual to liability. Instead, to be an "employer," an individual defendant must possess control over a company's operations in a manner that relates to a plaintiff's employment. In other words, his or her role within the company, and the decisions it entails, must directly affect the nature or conditions of a plaintiff's employment.

Bloomberg was the majority owner of Defendant Bloomberg L.P. for the period of Plaintiff's employment from September 2012 until October 2015. He is alleged to have been directly involved in addressing gender discrimination issues, both after he resumed his role as CEO in September 2014, following his final term as New York City's mayor, and, also, while serving as mayor. More significantly, Bloomberg is alleged to have fostered a culture of discrimination and sexual harassment at Bloomberg L.P. Plaintiff claims that the ordeal to which she was subjected by Ferris was a product of this culture. Bloomberg meets the economic reality test because his alleged role within Bloomberg L.P., and the decisions it entailed, directly affected the nature and conditions of Plaintiff's employment. To the extent that Plaintiff's allegations, which must be taken as true at this stage of the proceedings, are ultimately substantiated, the uniquely broad and remedial purposes of the City HRL demand that Bloomberg be held to account,

particularly if the vision of the New York City Council – that the City HRL "meld the broadest vision of social justice with the strongest law enforcement deterrent" (*Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 68 (1st Dept. 2009) (internal citation and quotation marks omitted)) – is to be honored and fulfilled by the courts.

QUESTIONS PRESENTED

1. Whether the majority below erred in holding that an individual employer may be held strictly liable, in addition to the corporate employer, under section 8-107(13)(b) of the New York City Human Rights Law, for the discriminatory conduct of managers and supervisors, only if plaintiff sufficiently alleges that the individual employer encouraged, condoned or approved the specific discriminatory conduct?
2. Whether Defendant-Respondent Bloomberg is subject to liability for discrimination as an "employer" under the New York City Human Rights Law?
3. Whether Defendant-Respondent Bloomberg's alleged role in fostering a culture of discrimination and sexual harassment at Bloomberg L.P. subjects him to liability for discrimination as an "employer" under the New York City Human Rights Law?

STATEMENT OF FACTS

A. Plaintiff's Ordeal and Bloomberg's Role

Plaintiff's action arises from the relentless and appalling sexual harassment to which she was subjected by Ferris, her supervisor at Bloomberg L.P., from shortly after she joined the company, in September 2012, until October 24, 2015, when she was forced to take indefinite medical leave. At the time she joined Bloomberg L.P., she was a 22–year–old recent college graduate who had not previously held a professional job. (R. 22). The harassment included two alleged incidents of rape. (R. 44-45, 50).

Bloomberg founded Bloomberg L.P. in 1981 and remained the majority owner through the commencement of this action. (R. 160). He served as CEO until 2001, when he ran for and was elected Mayor of New York City; in September 2014, nine months after his final term concluded, he resumed his position as CEO. *Id.* In 2007, while serving as mayor, Bloomberg still "communicated directly with Lex Fenwick [one of his stand-in CEOs] regarding claims of disparate treatment of female executives and about the management of Bloomberg's Human Resources Department, which customarily fields the initial complaints from aggrieved female employees at Bloomberg." *Id.* Plaintiff alleges that this practice of communication with his

company's top executives regarding discrimination issues continued up until Bloomberg's return as CEO in 2014. *Id.*

Plaintiff maintains that the corporate culture at Bloomberg L.P. during the period of her employment was deeply misogynist; that female employees were routinely objectified and subjected to comments on their physical appearance; and that Bloomberg "encouraged this type of sexist and sexually charged behavior." (R. 25-26). Before he became mayor, Bloomberg and other male managers at Bloomberg L.P. were accused in a lawsuit of "mak[ing] "repeated and unwelcome" sexual comments, overtures and gestures, which contributed to an offensive, locker-room culture." (R. 28). In another lawsuit, a former employee "claimed that "male employees from Mr. Bloomberg on down" routinely demoralized women at [Bloomberg L.P.]," and that "the sexual harassment culminated in her being raped in a Chicago hotel room by her direct superior, a top [Bloomberg L.P.] executive." (R. 30). Questioned about the incident during a deposition, Bloomberg (notoriously) responded "that he would not call the rape allegation genuine unless there was an "unimpeachable third party witness."" *Id.* On another occasion, describing one of his company's business information systems to female employees, Bloomberg proclaimed that "[i]t will do everything, including give you [fellatio]. I guess that puts a lot of you girls out of business." (R. 31).

Bloomberg L.P.'s Human Resources department was "notorious among its employees for its indifference to assisting lower-level female employees with their internal sexual harassment complaints and lack of enforcement and/or selective enforcement of its human resources policies, retaliation and in particular, sexual harassment policies." (R. 57).

Overall, Plaintiff alleges that her ordeal was the product of a company with a "top-down culture that is blatantly hostile towards women"; that, "[f]ollowing the example and leadership of [Bloomberg], [Bloomberg L.P.'s] dominant male culture allows sex to permeate the company's work environment on a daily basis"; and that it became "a reckless playground for male supervisors to target young, naïve female employees aspiring to have a career at [Bloomberg L.P.] for sex." (R. 22, 32).

B. Bloomberg's Motion to Dismiss

Following commencement of the action, Bloomberg made a motion to dismiss the complaint against him in its entirety pursuant to C.P.L.R. 3211(a)(7) for failure to state a cause of action. The motion was granted by the trial court on the basis that the alleged acts of sexual harassment "do not directly involve Mr. Bloomberg as an individual." (R. 16). However, upon reargument, the court held that Plaintiff sufficiently stated claims against Bloomberg as an employer under the City HRL. The court noted that, at this

stage of the proceedings, "the extent of his involvement with the decision-making process at [Bloomberg L.P.]," any "direct connection" to the alleged harassment," and his "alleged role if any in creating, encouraging, and condoning a culture at [Bloomberg L.P.] that caused [Plaintiff's] claims of civil rights violation, employment discrimination, and sexual harassment," respectively, remained to be determined. (R. 8-9).

C. The Appellate Division Decision

The Appellate Division, First Department, reversed the trial court and granted Bloomberg's motion in a split 3–2 decision. The majority found that, to hold an individual owner or officer of a corporate employer strictly liable as an employer under the City HRL, in addition to the corporate employer, a plaintiff must allege that the individual has an ownership interest or has the power to do more than carry out personnel decisions made by others *and* that the individual encouraged, condoned or approved the specific conduct which gave rise to the claim. (R. 419). The majority concluded that the City HRL claims must be dismissed as against Bloomberg because Plaintiff had failed to sufficiently allege that Bloomberg encouraged, condoned or approved the specific discriminatory conduct allegedly committed by Ferris. (R. 421).

The dissent argued that the majority would disregard the plain wording of the City HRL concerning the circumstances under which an employer is strictly liable for the discriminatory conduct of its employees and agents, as well as its express direction to courts that the statute requires an independent liberal construction in all circumstances. (R. 422). Moreover, it would collapse the distinction between the determination of an "employer" under the City and State Human Rights Laws, with the question of liability under the relevant statute, "i.e., whether an employer has "encouraged, condoned or approved" the underlying discriminatory conduct so as to be liable under the State HRL; or whether the employee in question (here, Ferris) has "exercised managerial or supervisory control" so as to render Bloomberg strictly liable under the City HRL." (R. 423). It found that "[t]his error—conflating the definition of "employer" with the bases for liability—infects the majority opinion," and that "[t]he majority would graft the State standard onto the City HRL, subverting the purpose underlying the more liberal statutory scheme of the City HRL." (R. 423-424). The dissent concluded that Plaintiff sufficiently stated a cause of action by alleging in her complaint that Bloomberg is an individual with an ownership interest and/or someone with the power to do more than carry out the personnel decisions of others, and that Ferris exercised managerial or supervisory authority over the Plaintiff.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to entertain this appeal because the action originated in the Supreme Court, and the order of the Appellate Division finally determined it in respect of Bloomberg. *See* CPLR 5601(a). Plaintiff appeals to this Court as of right because two justices in the Appellate Division dissented on a question of law in favor of Plaintiff. *Id.*

ARGUMENT

1. All Provisions of the New York City Human Rights Law must be Construed Broadly in Favor of Discrimination Plaintiffs, for the Accomplishment of its Uniquely Broad and Remedial Purposes.

In 2005, the New York City Council enacted the Local Civil Rights Restoration Act (Local Law No. 85). Its purpose was "to clarify the scope of New York City's Human Rights Law," arising from "the sense of the Council that New York City's Human Rights Law has been construed too narrowly to ensure protection of the civil rights of all persons covered by the law. *See* Local Law No. 85 (2005) § 1. In response, "through passage of this local law, the Council seeks to underscore that the provisions of New York City's Human Rights Law are to be construed independently from similar or identical provisions of New York state or federal statutes." *Id.*

At the core of the amendments effected by the Restoration Act was its revision of Administrative Code § 8-130, the construction provision of the City HRL, to state:

> The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have so been construed.

Local Law No. 85 (2005) § 7; Admin. Code § 8-130(a).

In *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62 (1st Dept. 2009), the court found that "the text and legislative history represent a desire that the City HRL meld the broadest vision of social justice with the strongest law enforcement deterrent." *Id.* at 68 (internal citation and quotation marks omitted). Thus, "an independent liberal construction analysis in all circumstances" is explicitly required, which "must be targeted to understanding and fulfilling what the statute characterizes as the City HRL's "uniquely broad and remedial" purposes, which go beyond those of counterpart state or federal civil rights laws." *Id.* at 66. In other words, in interpreting any provision of the City HRL, a court must ask, "as required by the City Council: What interpretation "would fulfill the uniquely broad and

remedial purposes of the City's human rights law"?" *Id.* at 74-75. Accordingly, this Court has mandated that all provisions of the City HRL must be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible." *Albunio v. City of New York*, 16 N.Y.3d 472, 477–478 (2011).

2. Section 8-107(13)(b) of the New York City Human Rights Law provides for Strict Liability of All Employers for the Discriminatory Conduct of Managers and Supervisors.

Subdivision (13) of section 8-107 of the City HRL governs an employer's liability for the unlawful discriminatory conduct of an employee or agent. The subdivision was enacted in 1991, as part of a series of amendments contained in Local Law No. 39; it provides that an employer shall be liable where (1) the employee or agent exercised managerial or supervisory responsibility; (2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; or (3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct." *See* Admin. Code § 8-107(13)(b). The purpose of the subdivision was to set forth standards for establishing an employer's liability that were distinct from (and

broader than) the standard for employer liability under the State HRL, as explained in the legislative history:

> The current City Human Rights Law is silent on the standard to be applied in deciding whether an employer can be held liable for the discriminatory conduct of its employees. The State Human Rights Law, upon which much of the City law is modeled, is also silent on this question. However, the State law provisions prohibiting discrimination in employment and in public accommodations have been narrowly construed by the courts of this State to impose liability upon an employer for its employee's unlawful conduct only when the employer knew of or condoned the conduct.

See Comm. on General Welfare, Legal Division, Report on Prop. Int. No. 465-A and 536-A (1991), pp. 18-19.

Thus, as confirmed by this Court in *Zakrzewska v. New School*, 14 N.Y.3d 469 (2010), employers are strictly liable under the City HRL for the discriminatory acts of managers or supervisors. On the other hand, under the State HRL, the standard remains that an "employer cannot be held liable for an employee's discriminatory act unless the employer became a party to it by encouraging, condoning, or approving it." *Totem Taxi, Inc. v. New York State Human Rights Appeal Bd.*, 65 N.Y.2d 300, 305 (1985). This standard applies to corporate and individual employers alike and applies regardless of

whether the offending employee is a manager or supervisor. The majority opinion at the Appellate Division acknowledged the different standard under the State HRL; yet, as the dissent points out, would nonetheless "graft the State standard onto the City HRL" (though only if there is an individual employer "in addition to the separately charged corporate employer" (R. 419)).

According to the Appellate Division majority, the distinction it makes between corporate and individual employers is justified because the holding in *Zakrzewska* is confined to corporate employers. (R. 418). The further distinction it makes between individual employers is supposedly derived from "the plain language of the statute," in that, "where the only employer is an individual and there is no corporate employer, the individual may be held strictly liable for the discriminatory acts of his or her managers and supervisors as such individual is the only possible employer under the statute." (R. 418-419).

In fact, the Appellate Division approach is wholly untenable. The City HRL makes no distinction between corporate and individual employers, let alone a further one between different kinds of individual employers. By making these distinctions, the Appellate Division is effectively rewriting the statute to achieve what it considers to be a desired

result. However, it is the desire of the City Council alone which properly informs the definition of an "employer" under the City HRL; "[w]hether or not that desire is wise as a matter of legislative policy, [the] judicial function is to give force to legislative decisions." *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 68–69 (1st Dept. 2009) (internal citations and quotation marks omitted); *see also Carr v. New York State Bd. of Elections*, 40 N.Y.2d 556, 559 (1976) (internal citation omitted) ("In statutory interpretation, legislative intent is the great and controlling principle."). It is for this reason that this Court stated explicitly in *Zakrzewska* that it could "not apply cases under the State Human Rights Law imposing liability only where the employer encourages, condones or approves the unlawful discriminatory acts" to cases under City HRL § 8-107(13)(b); "[b]y the plain language of [that provision] these are not factors to be considered so long as the offending employee exercised managerial or supervisory control." *Zakrzewska*, *supra*, 14 N.Y.3d at 481 (internal citations omitted). The exception perceived by the Appellate Division majority for certain individual employers simply does not exist.

The dissent below correctly identifies the central error of the majority opinion in conflating the definition of "employer" with the different bases for employer liability under the State HRL and the City HRL,

respectively. In doing so, the majority answered the wrong question: rather than the standard to be applied in deciding whether an individual employer can be held liable for the discriminatory conduct of an employee or agent – which is already statutorily answered by section 8-107(13)(b) of the City HRL – the threshold question for courts to answer is what qualifies an individual as an employer under the statute.

3. Bloomberg qualifies as an "Employer" under the New York City Human Rights Law.

In *Patrowich v. Chemical Bank*, 63 N.Y.2d 541 (1984), this Court held that an individual qualifies as an "employer" under the State HRL if "shown to have any ownership interest or any power to do more than carry out personnel decisions made by others." *Id.* at 542. The Court also referred in this regard to the "economic reality" test used to determine individual employer liability under various federal employment statutes, including the Fair Labor Standards Act ("FLSA").

Bloomberg clearly qualifies as someone with both an ownership interest and the power to do more than carry out personnel decisions made by others. According to the dissent below, "[t]his should end the inquiry, particularly in light of the current pre-discovery posture and our mandate to give the City HRL an independent liberal construction analysis in all circumstances." (R. 423) (internal citation omitted). The majority held to the

contrary, stating that this conclusion would "have the effect of imposing strict liability on every individual owner or high-ranking executive of any business in New York City," and that the "City HRL is not so broad that it imposes strict liability on an individual for simply holding an ownership stake or a leadership position in a liable corporate employer." (R. 420). However, in reaching this judgment, again the majority has intruded upon the province of the New York City Council, and disregarded its own obligation to construe the City HRL "broadly in favor of discrimination plaintiffs," wherever such a construction is "reasonably possible" (*Albunio v. City of New York*, 16 N.Y.3d 472, 477–478 (2011).

The construction advanced by the dissent below as to whether an individual qualifies as an "employer" under the City HRL is reasonable Yet, the majority reasons that "interpreting section 8–107(13)(b)(1) of the Administrative Code to impose liability on an owner or officer of a corporate employer in his or her individual capacity without any inquiry into his or her personal participation in the conduct giving rise to the claim would be inconsistent with the principles underlying this State's corporate law." (R. 420) (internal citation omitted). It notes that individual liability for a tort committed by a corporation may only be imposed on a corporate officer or owner who participates in the commission of the tort, and that a plaintiff who

attempts to pierce the corporate veil must show complete domination of the corporation by an individual, and that the individual, through his domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the plaintiff. *Id.* However, the limits to the privilege of limited liability extend further than these two instances; it is very long-established that the privilege will "be sacrificed at times when the sacrifice is essential to the end that some accepted public policy may be defended or upheld." *Berkey v. Third Ave. Ry. Co.*, 244 N.Y. 84, 95 (1926). The uniquely broad and remedial purposes of the City HRL are not beholden to the privilege of limited liability. Still, its reach is not necessarily as expansive as the majority below apprehends.

In *Irizarry v. Catsimatidis*, 722 F.3d 99 (2d Cir. 2013), the Second Circuit discussed the "economic reality" test at length in the context of the FLSA, as it applied to John Catsimatidis, chairman, president, and CEO of Gristede's Foods, Inc. Employment for FLSA purposes has been treated by the Second Circuit "as a flexible concept to be determined on a case-by-case basis by review of the totality of the circumstances." *Id.* at 104 (internal citation and quotation marks omitted). To be considered an employer, "an individual defendant must possess control over a company's actual "operations" in a manner that relates to a plaintiff's employment." *Id.* at 109.

There is no requirement that an individual employer "have been personally complicit in FLSA violations," nor is "only evidence indicating [an individual's] direct control over the [plaintiff employees] [to] be considered." *Id.* at 110. "Operational control," which is at the heart of the inquiry, does not mean that the individual employer "must be responsible for managing plaintiff employees—or, indeed, that he or she must have directly come into contact with the plaintiffs, their workplaces, or their schedules"; instead, an individual employer "exercises operational control over employees if his or her role within the company, and the decisions it entails, directly affect the nature or conditions of the employees' employment." *Id.*

The plaintiffs in *Irizarry* alleged violations of the FLSA's (and New York Labor Law's) overtime provisions. The Second Circuit concluded that Catsimatidis was personally liable, even though there was "no evidence that he was responsible for the FLSA violations—or that he ever directly managed or otherwise interacted with the plaintiffs in [the] case." *Id.* at 116. The same reasoning was applied in the context of the City HRL by the court in *Makinen v. City of N.Y.*, 167 F. Supp. 3d 472 (S.D.N.Y. 2016), *rev'd in part on other grounds*, 722 F. App'x 50 (2d Cir. 2018). Following a jury trial, the defendants, including former police commissioner Ray Kelly, were found liable to plaintiffs for discrimination under the City HRL. A motion to set

aside the jury verdict against Kelly was made on the basis that there was "not a scintilla of evidence demonstrating that Kelly participated—or was even aware of—any allegedly discriminatory conduct." *Id.* at 488 (internal citation omitted). The court rejected the argument, noting that "[i]f an individual is an employer, Plaintiffs need not show that he participated in the conduct giving rise to the claim." *Id.*

The jury had been instructed as follows: "[I]t is a matter of law that, as commissioner of the New York Police Department, defendant Kelly possesses sufficient power, authority, and control over the governance, administration, policies, and practices of the NYPD that he may be found personally liable for damages ..." *Id.* at 487. The court found the instruction was supported by the New York City Charter, which "vests the Police Commissioner with the cognizance and control of the government, administration, disposition and discipline of the department, and installs him as the chief executive chargeable with and responsible for the execution of all laws and the rules and regulations of the department." *Id.* at 488 (internal citation omitted). Thus, "Commissioner Kelly had sufficient control to be held … personally liable, regardless of his own participation." *Id.* at 488-489.

Bloomberg was the majority owner of Bloomberg L.P. throughout the period of events described in Plaintiff's complaint, from

September 2012 until October 2015. He is alleged to have been directly involved in addressing gender discrimination issues, both after he resumed his role as CEO in September 2014, following his final term as New York City's mayor, and, also, while serving as mayor. More fundamentally, he is alleged to have fostered a culture of discrimination and sexual harassment at Bloomberg L.P. Plaintiff claims the sexual harassment, including rape, she endured was a product of this culture. Bloomberg meets the economic reality test for an individual employer because his alleged role within Bloomberg L.P., and the decisions it entailed, directly affected the nature and conditions of Plaintiff's employment. His lack of personal involvement in the alleged harassment or of any direct connection to Plaintiff is immaterial, particularly, at the pleading stage of the proceedings.

The majority below addressed the economic reality test solely to note that plaintiff's reliance on *Irizarry* was misplaced "because the FLSA is an entirely different statute than the City HRL" – in that the former "establishes minimum wage, overtime pay, record keeping and child labor standards" – and "[t]hus, the requirements of the economic reality test and a CEO's operational control of the corporate employer are far more important, on their own, in establishing liability for FLSA violations than they would be for establishing liability for violations based on discriminatory conduct under

the City HRL." (R. 422). However, while the FLSA is certainly a different statute to the City HRL, they bear striking similarity to one another to the extent that the FLSA "nowhere defines "employer" in the first instance," and the Supreme Court "has consistently construed the [FLSA] liberally to apply to the furthest reaches consistent with congressional direction." *Irizarry*, *supra*, 722 F.3d at 103 (internal citation and quotation marks omitted).

The remedial purposes of the City HRL, as stressed repeatedly by the City Council to courts engaged in interpreting its provisions, are uniquely broad. The statute may indeed concern different aspects of the employment relationship to those encompassed by the FLSA, but its purposes are no less important and far-reaching. Bloomberg's role within Bloomberg L.P. was such that he could either advance or subvert those purposes. Plaintiff alleges that, in this role, he fostered a culture of discrimination and sexual harassment. In particular, she alleges a "top-down culture that is blatantly hostile towards women"; that, "[f]ollowing the example and leadership of [Bloomberg], [Bloomberg L.P.'s] dominant male culture allows sex to permeate the company's work environment on a daily basis"; and that plaintiff found herself in a workplace that had become "a reckless playground for male supervisors to target young, naïve female employees aspiring to have a career at [Bloomberg L.P.] for sex." (R. 22, 32). Plaintiff claims that her ordeal was

a product of this culture. To the extent her claims are ultimately substantiated, this Court should hold that Bloomberg is subject to liability as an employer under the City HRL.

CONCLUSION

For the reasons set forth above, the decision of the court below should be reversed.

Dated: New York, New York
December 17, 2019

Respectfully submitted,

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STATEMENT PURSUANT TO CPLR 5531

Court of Appeals
of the
State of New York

An Individual Described Herein by the Pseudonym
"MARGARET DOE",

Plaintiff-Appellant,

- against -

BLOOMBERG L.P.,

Defendant,

- and -

MICHAEL BLOOMBERG,

Defendant-Respondent,

- and -

NICHOLAS FERRIS,

Defendant.

1. The index number of the case is 28254/2016E.

2. The full names of the original parties are as set forth above. There has been no change in the parties.

3. The action was commenced in Supreme Court of the State of New York, Bronx County.

4. The action was commenced on or about December 7, 2016 by service of summons and verified complaint; Defendant Michael Bloomberg filed a motion to dismiss the complaint on or about February 15, 2017.

5. The nature and object of the action is employment law.

6. This appeal to the Appellate Division, First Department is from the Decision and Order of the Honorable Fernando Tapia, entered on September 10, 2018, in favor of Plaintiff, against Defendant Michael Bloomberg, which granted Plaintiff's motion to reargue the trial court's dismissal of the First, Second and Third Causes of Action against Mr. Bloomberg under the New York City Human Rights Law, N.Y. City Admin. Code § 8-101 et seq. ("NYCHRL"), and denied Mr. Bloomberg's motion to dismiss the First, Second and Third Causes of Action under the NYCHRL. This appeal to the New York State Court of Appeals is from the Order of the Appellate Division, First Department, dated September 24, 2019.

7. The appeal is on a full reproduced record.