To Be Argued By:
NIALL MACGIOLLABHUI
Time Requested: 15 Minutes

CTQ-2023-00001
U.S. Court of Appeals, Second Circuit Docket No. 22-1251

Court of Appeals

STATE OF NEW YORK

NAFEESA SYEED,

Plaintiff-Appellant,

—against—

BLOOMBERG L.P.,

Defendant-Respondent.

BRIEF FOR PLAINTIFF-APPELLANT

NIALL MACGIOLLABHUI
LAW OFFICE OF NIALL MACGIOLLABHUI
171 Madison Avenue, Suite 305
New York, New York 10016
Telephone: (646) 850-7516
Facsimile: (347) 620-1395

Attorneys for Plaintiff-Appellant

April 21, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

PRELIMINARY STATEMENT

This Court, in *Hoffman v Parade Publications*, 15 N.Y.3d 285 (2010), held that, to avail of the protections of the New York City or State Human Rights Laws, a nonresident plaintiff alleging employment discrimination must show that the alleged conduct had an impact within the respective city or state boundaries. The question presented here is how this impact requirement should apply in failure-to-hire and failure-to-promote cases where a nonresident plaintiff's prospective workplace is located in New York. In particular, Plaintiff Nafeesa Syeed, a South Asian-American woman who worked as a reporter for Defendant Bloomberg L.P. ("Bloomberg") in its Washington D.C. bureau, alleges that Bloomberg failed to promote her for discriminatory reasons to certain New York City-based positions, including the position of United Nations correspondent. Syeed filed a putative class action in New York State Supreme Court, which was removed to the United States District Court for the Southern District of New York. There, the district court held that *Hoffman* limited the protections of the New York City and State Human Rights Laws to nonresident plaintiffs who already work in New York and dismissed Syeed's case. The decision conflicted with other district court authority which found that the discriminatory denial of prospective employment in New York affects the

terms, conditions, or extent of a plaintiff's employment within the boundaries of New York and thus impacts that person in New York. The United States Court of Appeals for the Second Circuit, finding insufficiently clear guidance in *Hoffman* or elsewhere by which to resolve this conflict, certified the following question to this Court: whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City or State Human Rights Laws if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds.

In essence, the question is whether the impact requirement should be given a narrow or broad interpretation. The narrow interpretation would limit the protections of the City and State Human Rights Laws to nonresident plaintiffs who already work in New York, whereas the broad interpretation posits that alleged discriminatory conduct may impact a nonresident plaintiff in New York even if the plaintiff does not already work there. The distinction does not generally matter in cases which only involve an existing workplace, such as *Hoffman*, since the location of the workplace will also be where the impact of the conduct is felt by the plaintiff. However, in cases where a nonresident plaintiff is denied prospective employment on discriminatory grounds, the impact is not felt by the plaintiff

at their pre-existing workplace (assuming they are employed); it is felt at the location of the employment that was discriminatorily denied. Thus, restricting the protections of the City and State Human Rights Laws in prospective employment cases to nonresident plaintiffs who are already employed in New York will arbitrarily exclude plaintiffs who work outside New York or are not currently employed. It will arbitrarily include plaintiffs whose pre-existing New York employment is entirely unrelated to, and unimpacted by, the alleged discrimination. It will also lead to perverse results, particularly in failure-to-hire cases. For example, if a nonresident plaintiff maintains their pre-existing New York employment through the allegedly discriminatory decision by the prospective employer, they will have a viable failure-to-hire claim. If, though, the pre-existing employment ends sometime after the prospective employment was sought (for example, in the midst of interviewing for the new position), but before the discriminatory conduct occurred, the claim will be lost.

This Court should not reduce the impact requirement to a pre-existing employment test for nonresident plaintiffs discriminatorily denied employment in New York. Such an interpretation would significantly undermine the protections of the City and State Human Rights Laws and enable New York employers who direct discriminatory hiring and promotion

practices at nonresidents to be insulated from accountability in New York courts. Moreover, a narrow interpretation of the jurisdictional scope of the City Human Rights Law would directly contravene the mandate of the New York City Council (and of this Court) that the law's provisions be liberally construed and that its jurisprudence be maximally protective of civil rights in all circumstances. Even without this mandate, the broad interpretation of the impact requirement is the correct one. Accordingly, this Court should answer the certified question in the affirmative.

QUESTION PRESENTED

1. Whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City Human Rights Law or the New York State Human Rights Law if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds.

STATEMENT OF THE CASE

A. Factual Background

Bloomberg is a privately held company which operates Bloomberg Media, a news organization that employs approximately 2,700 reporters, producers, and editors across over 120 news bureaus worldwide.

A-3–4 (¶¶ 9, 11-12, 16). Bloomberg Media's employment decisions are controlled by its Editorial Management Committee, which operates from Bloomberg's New York City headquarters and reports to Bloomberg founder and CEO Michael Bloomberg. A-4–5 (¶¶ 12, 14, 17–18). All three members of the Editorial Management Committee are men. *Id.* (¶¶ 14, 17).

Nafeesa Syeed is a South Asian-American female. A-3 (¶ 7). In October 2014, she was hired by Bloomberg as a reporter in its Dubai bureau, where she experienced a work environment permeated by racism and hostility to women. A-15–16 (¶¶ 56, 58–60). A year later, in October 2015, she informed Bloomberg that she wished to transfer to its New York or Washington, D.C. bureaus because of her husband's job location. A-16–17 (¶ 61). In March 2016, Syeed obtained a position in the D.C. bureau covering cybersecurity. A-17–18 (¶¶ 64-66). After her relocation, though informed by a Human Resources representative that her salary would be brought "more in line" with other salaries in the D.C. bureau, and despite a raise, she still earned significantly less than her male peers. A-19 (¶ 70). She also experienced further workplace discrimination, including being repeatedly confused by male supervisors with a different female reporter of South Asian descent; being exposed to derogatory remarks by editors about female minority employees; having her work routinely overlooked and

undervalued; and being marginalized in favor of male reporters and editors. A-19–20 (¶¶ 71–75).

Throughout her time in the D.C. bureau, Syeed expressed interest in positions relating to foreign policy, her area of expertise. A-21 (¶ 77). In March 2018, Bloomberg's New York City-based United Nations reporter position became available, and Syeed affirmed her interest in it. A-22 (¶ 79). She also applied for other positions within Bloomberg's New York bureau, including the New Economy Forum Editor position. A-22–23 (¶ 82). She inquired multiple times about the U.N. reporter position and was repeatedly told by her team leader that it was unclear whether Bloomberg's decision-making body, the Editorial Management Committee, would fill or eliminate the position. *Id.* Ultimately, the position was filled by a less experienced, less qualified male reporter. *Id.* In a subsequent conversation with her managing editor, she was told that "Bloomberg considered making the New York UN job a "diversity slot," but it "didn't work out that way."" A-24 (¶ 84). Syeed understood this response to mean that, rather than being considered for positions on her merits, she was effectively limited to positions designated as "diversity slots." *Id.* On June 6, 2018, Plaintiff Syeed met with the Head of Human Resources for the D.C. bureau and complained that Bloomberg had a racist and sexist culture. A-25 (¶ 87).

Syeed concluded her account by stating: "I am probably not telling you anything you do not already know," to which the head of HR responded: "Sadly, yes." *Id.* Two days later, Syeed informed her team leader and managing editor that she could not continue to work at Bloomberg because of the discrimination that she faced. A-26 (¶ 88).

B. The District Court Proceedings

On August 9, 2020, Syeed, by then a resident of California, filed a putative class action in New York State Supreme Court against Bloomberg and several of its employees, and shortly thereafter, filed an amended complaint asserting individual claims under the New York City Human Rights Law ("NYCHRL") and the New York State Human Rights Law ("NYSHRL"). A-114–115. Prior to any proceedings in state court, the defendants removed the case to the United States District Court for the Southern District of New York pursuant to the Class Action Fairness Act, 15 U.S.C. § 78bb(f), and moved to dismiss the amended complaint. *Id.* In response, Syeed amended her complaint a second time, adding Naula Ndugga as a plaintiff and dropping the individual defendants, which left Bloomberg as the sole defendant in the case. *Id.*

Bloomberg moved again to dismiss Syeed's claims. *Id.* By Memorandum Opinion and Order dated October 25, 2021 (A-44–89),

District Judge Gregory H. Woods granted Bloomberg's motion on the basis that, having worked at all relevant times in Washington, D.C., Syeed had failed to adequately plead that she felt the impact of Bloomberg's discrimination in New York City or State for purposes of her claims under the NYCHRL and the NYSHRL.

C. The Second Circuit's Certification Order

Syeed appealed to the Second Circuit, which certified to this Court the following question:

> Whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City Human Rights Law or the New York State Human Rights Law if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds.

A-125–126. The Second Circuit found certification to be appropriate given the absence of state-court decisions directly on point, as well as the absence of clear guidance, including from *Hoffman*, from which it could predict how this Court would answer the question. A-123. It noted that "[c]ertain portions of *Hoffman* seem to imply that nonresidents can satisfy the NYCHRL or NYSHRL impact requirement only if they currently work in New York City or State." A-119 (citations omitted). However, "given that

the *Hoffman* court was only asked to address a claim related to a discriminatory termination," the court did not consider it appropriate "to read *Hoffman*'s references to "those who work in" New York City or State to necessarily preclude those who would work in New York City or State absent discrimination." *Id.* Furthermore, the court continued, "we note that another portion of *Hoffman* seems to allow for the possibility that a plaintiff could satisfy the impact requirement without living or working in New York City or State at the time of the discriminatory acts." *Id.* It referred specifically to the conclusion of the majority opinion in *Hoffman*, which found dismissal of plaintiff's action proper because "Hoffman was neither a resident of, nor employed in, the City or State of New York. *Nor* does Hoffman state a claim that the alleged discriminatory conduct had any impact in either of those locations." A-119–120 (citation omitted, emphasis in *Syeed*).

This Court accepted certification on February 9, 2023. A-127.

ARGUMENT

I. The Terms, Conditions or Extent of a Plaintiff's Employment are Impacted in New York by a Discriminatory Refusal to Hire or Promote the Plaintiff into a New York Position

The plaintiff in *Hoffman* was a resident of Georgia who worked in Atlanta. His employer was headquartered in New York City, from where

Hoffman received a phone call informing him that his employment was being terminated. Thereafter, he instituted an age discrimination action asserting that his termination violated the NYCHRL and the NYSHRL, and disputed the absence of subject matter jurisdiction, "asserting that he attended quarterly meetings in New York City, that [his employment unit] was managed from—and all corporate contracts were negotiated through—the New York City office, and that defendants' decision to terminate him was made and executed in New York City." *Hoffman*, 15 N.Y.3d at 288. This Court held however that, to avail of the NYCHRL and the NYSHRL, "nonresidents of the city and state must plead and prove that the alleged discriminatory conduct had an impact within those respective boundaries." *Id.* at 289.

In formulating the impact requirement, this Court found it "clear from the [NYCHRL's] language that its protections are afforded only to those who inhabit or are "persons in" the City of New York," meaning that "nonresidents who work in the city … may invoke its protection." *Id.* at 290. On the other hand, "although the locus of the decision to terminate may be a factor to consider, the success or failure of an NYCHRL claim should not be solely dependent on something as arbitrary as where the termination decision was made." *Id.* at 291. Likewise, in respect of the

NYSHRL, this Court found that its "obvious intent … is to protect "inhabitants" and persons "within" the state, meaning that those who work in New York fall within the class of persons who may bring discrimination claims in New York." *Id.* The plaintiff did not meet the impact test in respect of his termination, since "at most, Hoffman pleaded that his employment had a tangential connection to the city and state." *Id.* at 292. The majority opinion concluded as follows: "According to the complaint, Hoffman was neither a resident of, nor employed in, the City or State of New York. *Nor* does Hoffman state a claim that the alleged discriminatory conduct had any impact in either of those locations." *Id.* (emphasis added).

Thus, as the Second Circuit noted (A-118–120), while *Hoffman* is silent as to where the impact is felt from the denial of prospective employment in New York in failure-to-hire or failure-to-promote cases, it suggested that alleged discriminatory conduct could still have an impact in New York City or State even if the plaintiff neither lived nor worked in those locations. Though, as further noted by the Second Circuit (A-120), this issue does not appear to have arisen in state court, "the three other [federal] district courts that have considered the pertinent question have reached the opposite conclusion" to the one reached by the district court here (A-122). In the first case, *Anderson v. HotelsAB, LLC*, 15-cv-712 (LTS),

2015 WL 5008771 (S.D.N.Y. Aug. 24, 2015), the district court stated that "the [NYCHRL] impact requirement is satisfied if the plaintiff alleges that the conduct has affected the terms and conditions of plaintiff's employment within the city." *Id.* at *2 (citations omitted). The plaintiff alleged that she was not hired for a particular position following an interview on Shelter Island due to her relationship with her disabled son; she was found to have sufficiently alleged that the conduct "had an impact with respect to her prospective employment responsibilities in New York City" because the position would have required her to work there for a period of seven months each year. *Id.* at *3. Likewise, in *Chau v. Donovan*, 357 F. Supp. 3d 276 (S.D.N.Y. 2019), the court found that where a California resident "alleges she would have taken a position in New York City had she not been discriminated against, she has satisfied the requirement that the alleged discriminatory act had an impact within the boundaries of New York City, regardless of whether the conduct occurred in California or New York City." *Id.* at 284 (citations omitted). Finally, in *Scalercio-Isenberg v. Morgan Stanley Servs. Grp. Inc.*, No. 19-cv-6034 (JPO), 2019 WL 6916099, (S.D.N.Y. Dec. 19, 2019), a New Jersey resident was held to have met the impact requirement by alleging "that she was discriminated against when she was not hired by the New York office of Morgan Stanley, and that

Morgan Stanley retaliated against her when she complained." *Id.* at *4 In each of these cases, as the court observed in *Kraiem v. JonesTrading Institutional Servs. LLC.*, 492 F. Supp. 3d 184 (S.D.N.Y. 2020), the impact on the plaintiff "was specifically tied to their being deprived a job in New York on discriminatory grounds." *Id.* at 199 (citations omitted). Conversely, "pleading impact … by unspecified future career prospects" in New York or "a mere hope to work in New York down the line" would not suffice. *Id.*

The foregoing cases correctly illustrate that the impact requirement is not synonymous with the physical location of a nonresident plaintiff (or his or her pre-existing workplace) in failure-to-hire or failure-to-promote cases. Instead, the proper focus is on whether the alleged discriminatory conduct "had any impact on the terms, conditions or extent of [the plaintiff's] employment … within the boundaries of New York." *Hardwick v. Auriemma*, 116 A.D.3d 465, 467 (1st Dept. 2014). In this regard, speculative allegations of someday working in New York will not be enough. Since a plaintiff must allege the denial of a specific job in New York, the test will be relatively simple to apply, will lead to predictable results, and will not arbitrarily exclude nonresidents seeking employment in New York from the protections of the NYCHRL and the NYSHRL. Furthermore, interpreted this way, the impact requirement will not, as the

Second Circuit apprehends, "serve to immunize employers from liability under NYCHRL or NYSHRL for discriminatory conduct pertaining to New York City- or State-based jobs – conduct which does arguably have an impact within New York City or State." A. 124 (citation omitted). Therefore, this Court should answer the certified question in the affirmative and hold that a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the NYCHRL or the NYSHRL if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds.

II. The Liberal Construction Required by the N.Y.C. Human Rights Law Mandates a Broad Interpretation of the Impact Requirement

The New York City Council amended the construction provision of the NYCHRL, N.Y.C. Admin. Code § 8-130, in 2005, to make clear that it "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof." *See* N.Y.C. Local Law No. 85 of 2005, § 7. It did so again, in 2016, stating that its purpose was to further guide "the development of an independent body of jurisprudence for the New York city human rights law that is maximally protective of civil rights in all circumstances." *See* N.Y.C. Local Law No. 35 of 2016, § 1. Accordingly, "[e]xceptions to and exemptions from the provisions of [the

NYCHRL] shall be construed narrowly in order to maximize deterrence of discriminatory conduct." N.Y.C. Admin. Code § 8-130(b). Overall, the NYCHRL "explicitly requires an independent liberal construction analysis in all circumstances, even where state and federal civil rights laws have comparable language," *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 66 (1st Dept. 2009), such that, when interpreting its provisions, a court is required to ask: "What interpretation "would fulfill the uniquely broad and remedial purposes of the City's human rights law"?" *Id.* at 74-75. Therefore, as mandated by this Court (a mandate subsequently enshrined into the law itself, *see* N.Y.C. Admin. Code § 8-130(c)), all provisions of the NYCHRL 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).

In *Hoffman*, this Court pointed to three particular provisions of the NYCHRL in support of its observation that "it is clear from the statute's language that its protections are afforded only to those who inhabit or are "persons in" the City of New York." 15 N.Y.3d 285 at 289. Two of these provisions were repealed by the New York City Council in 2018, including the provision which referred to "all persons in the city of New York." *See* Local Law No. 63 of 2018 (repealing N.Y.C. Admin. Code §§ 8-104, 8-

105). The sole remaining provision relied upon in *Hoffman* provides as follows: "In the city of New York … there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another … to each other because of their actual or perceived differences…." N.Y.C. Admin. Code § 8-101.

Nonetheless, the repeal of Section 8-104 of the NYCHRL, and in particular its reference to "all persons in the city of New York,"[1] does not appear to significantly affect the present analysis, except to further emphasize that the proper focus of the impact requirement of the NYCHRL in failure-to-hire or failure-to-promote cases is not the physical location of a nonresident plaintiff but rather on whether the alleged discriminatory conduct had any impact on the terms, conditions or extent of the plaintiff's employment within the boundaries of New York City. On the other hand, the liberal construction mandate set forth in the NYCHRL is of critical significance when a court is called upon, as this Court is here, to choose between two reasonably possible interpretations of its provisions. Simply put, in the present circumstances, the broad interpretation of the impact requirement and of the jurisdictional scope of the NYCHRL must prevail.

[1] The repealed language, which states that a function of the New York City Commission on Human Rights is to "foster mutual understanding and respect among all persons in the city [of New York]," was transposed to the New York City Charter. *See* Local Law No. 63 of 2018.

CONCLUSION

For the reasons set forth above, this Court should answer the certified question in the affirmative.

Dated: New York, New York
April 21, 2023

Respectfully submitted,

NIALL MACGIOLLABHUI, ESQ.
LAW OFFICE OF NIALL MACGIOLLABHUÍ
171 Madison Avenue, Suite 305
New York, NY 10016
(646) 850-7516

Appellate Counsel to:

THE CLANCY LAW FIRM, P.C.

Attorneys for Plaintiff-Appellant

CERTIFICATION

I hereby certify pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.), § 500.13(c)(1), that the total word count for all printed text in the body of the brief, exclusive of the statement of the status of related litigation; the corporate disclosure statement; the table of contents, the table of cases and authorities and the statement of questions presented required by subsection (a) of this section; and any addendum containing material required by subsection 500.1(h) of this Part is 3,553 words.

Dated: New York, New York
April 21, 2023

Respectfully submitted,

NIALL MACGIOLLABHUI, ESQ.