State of New York
Court of Appeals

To be argued Thursday, January 7, 2021 (arguments begin at noon)

No. 8 Doe v Bloomberg, L.P.

Margaret Doe was a 22-year-old recent college graduate when she began working as a temporary employee in the marketing department of Bloomberg L.P. in September 2012, selling newsletter subscriptions. In December 2016, she brought this action for sexual harassment and sex discrimination against Bloomberg L.P.; against Michael Bloomberg, the company's majority owner and CEO; and against Nicholas Ferris, who was global business director of the Bloomberg Brief Newsletter Division and the plaintiff's direct supervisor. Most of her allegations involved Ferris, who she said began making unwanted advances toward her shortly after her employment began, including inappropriate touching and offensive emails and messages. She said Ferris raped her twice when she was intoxicated in 2013. As for Bloomberg, the owner, she alleged that his leadership created a hostile work environment for women at the company and fostered a culture of sexual harassment and discrimination by supervisors.

Supreme Court initially granted Michael Bloomberg's motion to dismiss the complaint against him personally on the ground that the alleged acts of harassment "do not directly involve Mr. Bloomberg as an individual." However, on reargument, the court found the plaintiff had sufficiently stated claims against him as an employer under the New York City Human Rights Law (City HRL), which imposes strict liability on an "employer" for the discriminatory acts of the employer's managers and supervisors (Administrative Code section 8-107[13][b][1]).

The Appellate Division, First Department reversed on a 3-2 vote and dismissed the City HRL claim, saying her allegations were insufficient because "they fail to connect Mr. Bloomberg in any way to the specific discriminatory conduct allegedly committed by Mr. Ferris." While neither the statute nor its legislative history define the term "employer," the majority ruled that "in order to hold an individual owner or officer of a corporate employer, in addition to the separately charged corporate employer, strictly liable under section 8-107(13)(b)(1)..., 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* must allege that the individual encouraged, condoned or approved the specific conduct which gave rise to the claim.... [H]olding an individual owner or officer of a corporate employer liable under the City HRL as an employer, without even an allegation that the individual participated, in some way, in the specific conduct that gave rise to the claim, would have the effect of imposing strict liability on every individual owner or high-ranking executive of any business in New York City."

The dissenters argue an individual is an "employer" under the City HRL or the State Human Rights Law (State HRL) if they have an ownership interest in the organization or the power to make personnel decisions. "Once someone is determined to be an 'employer,' a court must then turn to 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.... The majority collapses these two distinct requirements, in effect holding that only someone who 'encourages, condones or approves' is an 'employer'.... Under the City HRL, plaintiff is required only to allege 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 plaintiff, which the complaint alleges."

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State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, January 7, 2021 (arguments begin at noon)

No. 9 People v Tyrone Gordon

In 2015, Suffolk County police officers executed a warrant that authorized them to search "the entire premises" of Tyrone Gordon's home in Coram, and they found incriminating evidence in two vehicles on the property. They recovered a loaded handgun from an inoperable and unregistered Chevrolet sedan that was sitting in Gordon's backyard and recovered heroin and drug paraphernalia from a registered Nissan Maxima that was parked in his driveway. Gordon moved to suppress the evidence on the ground that the car searches exceeded the scope of the warrant, which made no mention of any vehicles. The prosecutor argued that authority to search "the entire premises" included any cars located on the premises.

Supreme Court granted the motion to suppress the evidence seized from both vehicles based on People v Sciacca (45 NY2d 122 [1978]), which states, "It is clear that a warrant to search a building does not include authority to search vehicles at the premises." Supreme Court said, "[U]ntil clarified or overruled, the Court of Appeals holding in Sciacca requires that a search of a vehicle should be separately delineated with particularized probable cause.... However, a review of the affidavit for the warrant does not establish that the vehicles had any involvement with the crime nor [are] there any specific statements made about the vehicles.... Alternatively, as to the 2000 Chevy, the Second Department recently held [in People v Velez (138 AD3d 1041)] that 'the search of the shed [in the backyard] exceeded the scope of the warrant, which authorized the search of the defendant's residence and yard only'.... It would appear that an unregistered vehicle in the backyard was a storage place, as a shed, sufficient to require a particularized warrant."

The Appellate Division, Second Department affirmed, saying, "Since the search warrant did not particularize that a search of the vehicles was permitted..., and since probable cause to search those vehicles had not been established in the application for the search warrant..., we agree with the court's determination to grant suppression of the evidence seized from the vehicles."

The prosecution argues, "In New York the curtilage of a house has always been considered part of the house. When a search warrant is issued for a place or premises, the police may search anywhere the subject matter of the warrant could be found, including closed containers within the home. A vehicle parked within the curtilage is a closed container within the area considered part of the home. The term 'premises' – which is the broadest designation of an allowable search permitted in CPL § 690.15 – should, at a minimum, refer to a house and its curtilage, and should include containers such as vehicles parked with the curtilage." The prosecution says the suppression rulings here conflict with the Third Department's decision in People v Powers (173 AD2d 886), which held that a warrant to search a garage permitted the search of a car in the garage.

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To be argued Thursday, January 7, 2021 (arguments begin at noon)

No. 10 People v Drury Duval

Based on sealed testimony of a detective and a confidential informant in 2012, officers obtained a warrant to search for and seize "any and all firearms" and related items in a Bronx building "located at: [XXXX] EAST 211th STREET, A PRIVATE RESIDENCE CLEARLY MARKED [XXXX]." Officers seized a .45 caliber handgun, ammunition, a stun gun and other items they found on the third floor of the building, where Drury Duval resided, and he was charged with weapon possession and related crimes. Duval moved to suppress the contraband, contending the warrant was defective because it did not specify which part of the building was to be searched. Defense counsel said in a sworn affirmation that the building was divided into three separate residences, with Duval living on the third floor, an unrelated family on the second floor, and Duval's mother (the building owner) living on the first floor. Counsel submitted several documents in support, including an entry from the City Department of Housing Preservation and Development's website which showed the building was registered as having three units. To refute Duval's claim that the building contained three separate apartments, the prosecutor submitted the sealed warrant application materials for in camera review by the court.

Supreme Court denied the motion, saying the warrant and application "sufficiently specified the premises to be searched." It declined to disclose the warrant application materials because "the informant's life ... would be jeopardized by disclosure" of his identity. Duval pled guilty to third-degree weapon possession and was sentenced to two to four years in prison.

The Appellate Division, First Department affirmed on a 3-2 vote, saying, "On its face, the warrant was sufficiently specific as to the place to be searched, because it stated the address and described the premises as a 'private residence,' which to all appearances it was. The testimony describing the execution of the warrant as well as the nature of defendant's residence therein makes clear that the house was defendant's family home regardless of any reference in city tax records indicating different legal units. This was sufficient to authorize a search of the entire house. Since the warrant herein was sufficiently particularized and not overbroad on its face, as was the case in [Groh v Ramirez (540 US 551)], the court could refute defendant's claim with additional materials in support of the warrant application, including the in camera materials.... [T]he suppression court ... reasonably determined that the building in fact did not consist of multiple discrete units...."

The dissenters argued the evidence should be suppressed "because the search warrant did not specify which apartment in the three-unit building was to be searched..., and that deficiency was not cured by reference to any other documents that could properly have been considered by the court.... To the extent that the majority relies on documents that were part of the sealed warrant materials, under Groh, neither the motion court nor this court may consider those in determining the warrant's constitutionality, since they were not incorporated by reference into the warrant.... Since the motion court could not consider the warrant application materials, and the People presented no facts in their opposition papers to rebut defendant's prima facie showing that the warrant lacked sufficient specificity, the suppression motion should have been granted."

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