

## **MORRIS DUFFY ALONSO & FALEY** **MUNICIPAL LAW UPDATE (FEDERAL)**

In an effort to keep our municipal clients apprised of changes in the law we have summarized two recent United States Supreme Court decisions concerning civil rights.

### **THE TIMELINESS IN FILING AN EEOC CHARGE CONCERNING SUBSEQUENT EFFECTS OF PAST DISCRIMINATION**

*Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 127 S.Ct. 2162 (2007)

The United States Supreme Court, in a five to four decision, held that the subsequent effects of past discrimination do not restart the clock for filing a complaint with the EEOC.

An oft used expression is that “timing is everything.” This could not be more true than in federal litigation. In Title VII of the Civil Rights Act of 1964 (the “Act”), Congress established a requirement of reporting discrimination to the Equal Employment Opportunity Commission (“EEOC”) as a precondition to filing a lawsuit in federal court. The Act requires that a complaint be made to the EEOC within either 180 days or 300 days after the alleged unlawful employment practice occurred, depending on the state (300 days in New York).

Lilly Ledbetter had worked for the Goodyear Tire and Rubber Company from 1979 until 1998. During the time of her employment, salaried personnel were given raises based upon their annual evaluations.

Shortly before Ledbetter retired, she filed a complaint with the EEOC alleging that in the past she had been given poor evaluations as a result of gender discrimination and that the evaluations negatively affected her raises. The evaluations and pay decisions, however, were made more than 180<sup>1</sup> days from the time Ledbetter made her complaint to the EEOC.

Plaintiff argued that even though the pay decisions had occurred prior to the statutory period, each paycheck she received was a continuing act of discrimination, and, therefore, her action was not time barred. The Supreme Court did not accept her argument. The Court stated that “a pay-setting decision is a discrete act that occurs at a particular point in time...” Even though the effect of the prior pay decisions was felt within the 180 days of the complaint, “current effects alone cannot breathe life into prior, uncharged discrimination.”

In conclusion, the Court held, “[w]e therefore reject the suggestion that an employment practice committed with no improper purpose and no discriminatory intent is rendered unlawful nonetheless because it gives some effect to an intentional discriminatory act that occurred outside the charging period.”<sup>2</sup>

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for making a complaint with a state agency. The states with such a provision have a 300 day limit.

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<sup>1</sup> In the state in which Ledbetter worked, Alabama, one had 180 days to file a complaint. The difference is based upon whether the state concerned has a provision

<sup>2</sup> In the specific area of pay and salary the Equal Pay Act (EPA) and the Fair Labor Standards Act (FLSA) also apply. In *Ledbetter*, the Court was only considering Title VII.

## **IT WAS NOT A VIOLATION OF THE FOURTH AMENDMENT FOR THE POLICE TO DETAIN PEOPLE WHILE EXECUTING A LAWFUL SEARCH WARRANT**

*Los Angeles County, California, et al. v. Max Rettele, et al.* 127 S.Ct. 1989 (2007)

Deputies of the Los Angeles County Sheriff's Department obtained a valid search warrant to search a house. However, unfortunately for the occupants, the deputies were not aware that the house was sold and the people being sought had moved out three months after the officers obtained the search warrant. The four suspects, who were African-American, were subjects in an investigation of a fraud and identity-theft crime ring. One of the subjects had a registered 9-millimeter handgun.

At 7:15 am, the deputies knocked on the door. It was answered by a 17 year old Caucasian male. The officers ordered the male to lie down on the ground and then entered the house. Upon searching the house, the deputies came upon Max Rettele and Judy Sadler, both Caucasian, who were in bed. (The 17 year old who answered the door was Judy Sadler's son). The deputies, with guns drawn, ordered Rettele and Sadler out of the bed. As they were getting up, Rettele and Sadler protested that they did not have any clothes on. Rettele attempted to put on a pair of sweatpants, but the deputies ordered him not to move. Likewise, Sadler attempted to cover up with a sheet, but was not allowed to. The two were held at gunpoint for one to two minutes, and Rettele was allowed to retrieve a robe for Sadler and get dressed himself.

Within another minute or two, the deputies realized they had made a mistake. They apologized to Rettele and Sadler, thanked them for not getting upset and left the house. All three occupants of the house later filed suit in federal court under 42 U.S.C. § 1983 for the violation of their civil rights.

The Fourth Amendment of the United States Constitution protects people from

unreasonable search and seizure by the government. It is well settled law that detention by the police is considered a seizure under the Fourth Amendment. However, the Supreme Court held that the acts of the deputies were reasonable, and, therefore, they did not violate the Fourth Amendment Rights of the plaintiffs.

In executing a search warrant, the police may take reasonable action to secure the premises so that they can ensure their own safety and the effectiveness of the search. The Court concluded that the presence of Caucasians in the house did not mean that the suspects were not present. It was also reasonable, considering that many criminals keep weapons near their beds, for the deputies to order Rettele and Sadler out of the bed. Additionally, the deputies should not be expected to turn their backs on Rettele and Sadler and let them dress until the deputies ensured that there was no weapon present. According to the Court, "the risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."

The Court cautioned, however, that the deputies were not free to force Rettele and Sadler to remain motionless and standing for any longer than necessary. "Special circumstances, or possibly a prolonged detention, might render a search unreasonable."

In summing up, the Court held: "The Fourth Amendment allows warrants to issue on probable cause, a standard well short of absolute certainty. Valid warrants will issue to search the innocent, and people like Rettele and Sadler unfortunately bear the cost. Officers executing search warrants on occasion enter a house when

residents are engaged in private activity; and the resulting frustration, embarrassment, and humiliation may be real, as was true here. When officers execute a valid warrant and act in a reasonable manner to protect themselves from

harm, however, the Fourth Amendment is not violated.”

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