United States District Court, M.D. Florida.
Patricia Winn CARTER, Maxine M. Jones, Cynthia Silianoff, Judy Lauber, Patricia Grimaldi, Kathleen Lepp, Julie Reiter, and Alice Kooiman, individually and on behalf of all other persons similarly situated,
Plaintiffs,
v.
WEST PUBLISHING COMPANY, West Publishing Corporation, West Services, Inc., and Bank Baldwin Law Publishing Company, Defendants.
**No. 972537CIVT26A.**

April 19, 1999.

*ORDER*

LAZZARA

***1** Before the Court are Defendant's Renewed Motion for Partial Summary Judgment (Dkt.67), Defendant's Memorandum of Law in Support of Defendant's Renewed Motion for Partial Summary Judgment (Dkt.68), Plaintiffs' Statement of Disputed Material Facts in Opposition to Defendant's Renewed Motion for Partial Summary Judgment (Dkt.86), and Plaintiffs' Response in Opposition. (Dkt.87). As noted by Defendant, "resolution of this motion will promote the efficient adjudication of this lawsuit as a ruling in West's favor will moot Plaintiffs' motion for class certification" (Dkt. 68 at n. 1).: After carefully reviewing the pleadings, motions, declarations, affidavits, depositions, exhibits, and other materials in the file, the Court is of the opinion that 1) a ruling on the partial summary judgment would be beneficial prior to a ruling on class certification and 2) partial summary judgment should be denied.

The issue before this Court is whether this putative class action is time-barred. In resolving this issue, the Court must determine 1) what act triggers the commencement of the statute of limitations in this Title VII gender-based discrimination case, 2) if the statute of limitations has run, whether equitable tolling or equitable estoppel applies to toll its running, and 3) whether the doctrine of laches applies in this particular suit. The determination hinges on the facts leading up to Plaintiff Maxine Jones' filing of her complaint with the EEOC and the filing of this lawsuit.[FN1] Specifically, the issues are whether Ms. Jones' EEOC complaint was timely filed on November 6, 1996, and whether this lawsuit was timely filed on October 16, 1997.

*GENERAL FACTS*

In the operative Second Amended Complaint, Plaintiffs sue Defendants West for a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.,* and the Equal Pay Act.[FN2] The Title VII claims allege both disparate treatment and disparate impact regarding certain of West Publishing Company's female employees' alleged rights to stock ownership in the company. Although the Second Amended Complaint makes reference at times to retaliation, sexual harassment, and a hostile work environment, this Court has previously ruled that these allegations are deemed as mere explanatory facts in support of the claims of disparate treatment and disparate impact based on gender discrimination in the sale of stock. (Dkt. 120-order of Feb. 25, 1999).

Defendant West Publishing Company (West) "was a privately-held company from its inception in the late nineteenth century until June 1996, at which time it was purchased by a Canadian publishing conglomerate, the Thomson Corporation [Thomson]." (Dkt. 123, Sec. Am. Compl. at para. 14). At all times relevant to this lawsuit, West sold shares to selected employees in three different categories: 1) members of the Management and Executive Committee (which is alleged to be only a designation on the payroll); 2) unit holders of Key Employee Incentive Program (KEIP); and 3) salespersons. West arranged for the sale of stock to be a risk-free device whereby a bank financed the employees who lacked cash to purchase the stock. As soon as any debt was retired, the dividends accrued to the employee/shareholders as a supplement to their other compensation. The stock paid dividends about six times a year. The stock increased in value. Pursuant to the stock agreement, West had a repurchase option in the event of death, incompetence, or termination of employment, which option it always exercised. Additionally, West had a right of first refusal if the employee wanted to sell any stock.

***2** West paid the last stock dividends on June 4, 1996. (Dkt. 88-Depo. of Opperman at 154). On or about June 20, 1996, the time West was sold to Thomson, the last stock redemption payments were made. It is undisputed that no sales of stock or offers to sell stock to any employee, male or female, occurred after August 30, 1994, almost two years earlier. (Dkt. 68, Exh. B, Aff. Nelson at para. 5).

According to Plaintiffs, the stock program "constituted a continuing form of compensation to those employees who were allowed to purchase stock and was a privilege of their employment." (Dkt. 123 at para. 48). Plaintiffs allege that the "increase in stock book value, and the payment of stock dividends, constituted a form of additional and continuing compensation from West to those who were invited to participate in the stock program." (Dkt. 123 at para. 60). This compensation was unavailable to employees who were not shareholders. The shareholders were predominantly male, "despite the relative balance of males and females in West's work force, and despite the parity of qualifications between West's male and female employees." (Dkt. 123 at para. 63). "Unlike West's predominately male employees who participated in the stock program, the West female employees who owned no stock received no dividends or capital gains upon the sale of West to Thomson." (Dkt. 123 at para. 68).

Plaintiffs allege that West engaged in a systematic pattern of gender-based discrimination. This pattern and practice of discrimination set the stage for few, if any, women ranking as highly as their male colleagues in job performance, which in turn virtually insured that few, if any, women would receive the same terms, compensation and benefits, particularly the opportunity to buy into the stock program. Plaintiffs contend the discriminatory practices constituted a continuing violation up to and including June 1996, at which time the last stock dividends and redemptions were paid. The redemption payments coincided with the sale of West to Thomson.

Plaintiffs request an award of back pay; damages for lost compensation and job benefits that the individual plaintiffs and the class they seek to represent would have received but for West's discriminatory practices; compensatory damages for emotional distress, humiliation, embarrassment and anguish; and punitive damages commensurate with West's ability to pay and to deter future discriminatory conduct. (Dkt. 123 at prayer for relief). Plaintiffs seek to certify the following class:

All females who:

1. were employed by West between January 12, 1996 and June 20, 1996; and

2. during their employment by West, either

a. did not receive any shares of West stock, but

i. were in the Management and Executive Group,

ii. were recipients of units in the Key Employees' Incentive Plan, or

iii. were sales representatives in any of West's departments of divisions, or

b. received some shares of West stock, but fewer shares than were received by similarly-situated males.

*FACTS RELATING TO TIMELINESS OF MS. JONES' EEOC CHARGE*

***3** Maxine Jones filed her EEOC charge on November 6, 1996, and filed this lawsuit on October 16, 1997. The Court relies on the following facts in making its determination that this lawsuit is not time-barred.

West hired Ms. Jones in 1977. (Dkt. 123 at para. 17). Ms. Jones, an attorney, was West's first female sales representative. (*Id.*). During her employment, she has lived in either Ohio or Houston, Texas. (*Id.*). West awarded Ms. Jones units in KEIP in 1984, 1985, 1986, 1988, and 1992. (Dkt. 68 at Exh. C). She continues to be employed by West. (Dkt. 123 at para. 17).

Ms. Jones first learned of West's sale of stock to employees when she interviewed for a job with West in 1977. (Dkt. 68, Exh. A-Depo of Jones at 17,60-61). She remembered vaguely that it was suggested that if she did well in her territory, she might have the opportunity to purchase some stock. (I. at 17). She heard about the sale of stock again during one of the "secret sessions" when she was awarded units of KEIP (I. at 59). Specifically, she recalled that Jim Lindell, the treasurer of West at the time, told her that the receipt of KEIP units "was the first step for getting stock and the next step would be to get stock." (*Id.*).

Ms. Jones testified that Plaintiff Patricia Carter told her that Mr. Bateman of West [FN3] told Patricia Carter that on

two occasions, Mr. Bateman recommended both she and Ms. Jones for the opportunity to purchase stock. (Dkt. 68, Exh. A---Depo of Jones at 89-90). Patricia Carter told her that on both occasions, Mr. Lombardi of West declined to agree to offer them stock. (*Id.*). According to Mr. Dwight Opperman, the chief executive officer of West, Mr. Bateman did not make stock recommendations to Mr. Opperman during the relevant time periods. (Dkt. 88-Depo of Opperman at 224-231, 235, 335).

Ms. Jones testified that during the late 1980's, she overheard somebody's conversations about dividends and stock ownership. (Dkt. 55, Exh. 2-Depo of Jones at 123).[FN4] She testified that "[t]hey usually discussed them and boasted about them at the sales meeting and, particularly, in the hospitality room." (*Id.*). She testified that she observed that there were only men who boasted about the stock. (*Id.*) at 123-124). There was one woman, Margaret Daly, who "was boasting that all the women on the sales force were jealous of her [Margaret Daly] because she was the only one who had stock." (*Id.* at 124). Ms. Jones also testified that "[w]e never had conversations about stock because that subject was forbidden." (*Id.* at 122). She continued, "for example, the KEIPs units. We were told not to discuss the KEIP units." (*Id.*). She testified that when Bob Smith was boasting about the stock he had at a sales meeting, Mr. Opperman came up to him "and said to him, we do not discuss this in public, Bob." (*Id.*).

To Ms. Jones, another example of West's policy to keep stock purchases secret occurred when Jim Hankins, a West employee, was "really reamed out for even asking about it. He was told, if we decide to sell you stock, we'll call you. Don't call us." (*Id.* at 60). Ms. Jones believed that "[t]hey were very secretive about stock and it was the advice of those who were older and wiser that you don't broach the subject of stock." (*Id.* at 60). She acknowledged that at some point in her almost 22-year career at West she became aware that some employees were buying stock at West: "It was a secret, but it wasn't a secret." (*Id.* at 61-62).

***4** Ms. Jones testified that the criteria for stock was a secret:

I don't know that anybody knew how stock proposals were actually made and determined, because they never-and I think I can use that word in the absolute---never let us know what were the criteria for getting stock. There were some impressions as to what might be a criteria, but there were never any written. There were never any verbal. It was another one of the big secrets.

(*Id.* at 85, 67, 162-64; Dkt. 88---Depo of Opperman at 55, 61, 221-22, 231-32).

With respect to stock sales being made in a discriminatory fashion, Ms. Jones testified:

Q: Was it apparent to you that it was mostly men that were stock owners in the sales force?

A: They were only men.

Q: And you were aware of that? So it was obvious to you?

A: Oh, yes.

(Dkt. 55, Exh. 2 at 123-24). She further testified:
Q: And it was obvious that most of the shareholders were men; is that right?

A: They were all men until Margaret on the sales force.

(*Id.* at 170-71).

Ms. Jones testified that she was discriminated against with regard to territory assignments as early as 1986 when Bob Jones "pulled territory 2 right out from under me ... and he worked that [territory] through the sale of the company in 1996." (Dkt. 55, Exh. 2 at 23-26, 160). She testified that as to the top 25 performers, "you're talking about apples and oranges because you're talking about disparate territories for the most part." (*Id.* at 64). She later testified again that "you cannot compare apples and oranges. The territories were disparate." (*Id.* at 102). She further concluded that some of the male salespersons who she believed owned stock were not among the top 25. (*Id.* at 65, 160).

Ms. Jones visited the EEOC in 1986. According to Ms. Jones, the EEOC investigator said:

[I]f you do prevail, it will be a pyretic victory. Because West will make life so miserable for you that your career is over, and you have to recognize that fact. And, are you willing to give up your career at this time? And thinking about it, I thought, no, I'm not willing to give up my career at this time.

(Dkt.55, Exh. 2 at 136).

On January 18, 1990, Ms. Jones wrote a letter to Mr. Gossman, a sales coordinator for West. (Dkt.68, Exh. D). The letter addressed her concerns regarding her territory assignment for sales. She wrote in pertinent part:

In reference to the conversation we had on December 22, 1989, regarding the distribution of Reed Wieck's territory, I still feel that I am not getting a fair share. In fact, instead of the one-third or one-fourth that I would expect to receive (depending on whether the territory is being divided among three or four representatives), I am barely allotted one-fifth.

On numerous other occasions, in analogous situations, I have been ignored, passed over, or simply short changed. This is most unfair. It seems that for some reason unknown to me, I am being systematically, intentionally, and repeatedly discriminated against; and, as you know, I have been a loyal West representative for many years. I am now in my fourteenth year with West.

***5** [The letter sets forth examples of instances in which two men were allotted more contacts and larger and better territories than she.]

These examples are but a few from a very long list of the disparate treatment I have received just since Mr. Bukrey's retirement.

At her deposition, Ms. Jones testified that she had not received any stock before January 1990 when she wrote the letter. (Dkt. 55, Exh. 2 at 154). She felt, however, that she was "on track to get it." (*Id.* at 154).

On March 13, 1995, Ms. Jones wrote a letter to Mr. Ryan at West. (Dkt.68, Exh. E). She wrote the letter after attending a sexual harassment seminar, and the letter addressed her concern over a "rover" taking over one of her customers in contravention of the rules of West. She requested to receive the commission on the sale made by the "rover." She ended the letter with the following postscript:

You know that West sends out policies and rules concerning cutoff dates that are chiseled in stone---with "no exceptions." Now, in dealing with me, there is an exception, which results in a discriminatory impact.

(Dkt.68, Exh. E).

On November 6, 1996, for the first time, Ms. Jones filed a charge of discrimination against West with "the Texas Commission on Human Rights/EEOC, alleging that in addition to discriminatory territory assignments, on a continuing basis she and other female employees at West were denied participation in the employee stock purchase program." (Dkt. 123 at para. 90). This allegation is substantiated by the specific allegations of the charge of discrimination:

On a continuing basis, I along with other women have been denied participation in the employee stock purchase program. The program was canceled in June 1996, with a payment to participating employees of $3 billion. In July 1996, I was offered a reassignment with less responsibilities and assigned territory, Pittsburgh, PA. In July 1996, I was denied a better territory in Houston, TX.

(Emphasis added). (Dkt. 123 Exh. 1).

When asked why she waited until West was sold to Thomson to bring a lawsuit, Ms. Jones responded that she did not wait until West was sold before going to the EEOC. (Dkt. 55, Exh. 2 at 135). She noted that she had gone to the EEOC shortly after she received a letter dated March 27, 1986, from Mr. Pflughaupt stating what territories were available to her. (*Id.* and Dkt. 87, Exh. D). Even though the letter indicated she could choose territory 2, an apparently sought after territory, that territory went to Bob Jones. Ms. Jones divulged that she did not have the same concerns about her career after June 1996, "because we were no longer West Publishing ... [t]here was a change in ownership." (Dkt. 55, Exh. 2 at 137). Ms. Jones testified that after a West employee had unsuccessfully sued West, Mr. Opperman "stood up at a luncheon before the case was settled and said that no West employee was going to prevail against West." (*Id.* at 132). She testified

that Mr. *Opperman* said he "would spend any amount of money that it took to defeat anyone. Now, that was pretty intimidating." (*Id.* at 132). She claimed that after Thomson bought West she did not know if it was actually "safer" to bring a charge with the EEOC, "but it was a different situation." (*Id.* at 137).

*THE GOSCHE CASE and ITS SIGNIFICANCE*

***6** Both parties argue extensively about the effect of *Gosche v. West Publishing Company,* Civ. No. 97-Z-1954, which was filed in the United States District Court for the District of Colorado. The alleged facts of *Gosche* involve actual promises to give Gosche, a West employee, stock in 1994 and 1995. The claims for relief are the same as in the instant case with the addition of a breach of contract claim in the Colorado action. There, the district court found that the statute of limitations had run on Gosche's Title VII claim.

The Court has studied the transcript of the hearing on West's motion to dismiss held on July 21, 1998, in the *Gosche* case. Counsel for West explained the differences between that case and the case pending before this Court as follows:

[Gosche] has chosen to proceed on her own and bring her own claim, and then she may not avail herself of the protections of being an absent class member in that action.

In [the Middle District] case, there was no allegation or testimony of knowledge by either of the named plaintiffs that they had been informed that they were being denied the opportunity to buy stock. And they put in affidavits saying they did not know the stock program had ended, just as plaintiff has put here before the Court.

However, plaintiff has pled in her complaint and testified in her deposition that she was told affirmatively, unlike the named plaintiffs in Florida, you are not being given the opportunity to buy stock. So it's very different from that action.

She was told it in August of 1994; and she was told in August 1995 that no one was being given the opportunity to buy stock. And she questioned it again in 1995, according to her deposition. So the facts are very different from the Middle District-or they're different from the Middle District of Florida.

(Emphasis added). (Dkt. 87 Exh. G at. 5-6). The District Court in Colorado ruled from the bench:

The real problem here is the statute of limitations on the Title VII. And in some ways, it's unfortunate that the plaintiff did not consider the failure to get stock in August of '94 as the accruing of the cause of action; but that's understandable, because she was apparently promised that she would get it in August of '95. When she did not get stock in August of '95, however, it appears to the Court that the cause of action then accrued. And that distinguishes this case from the Florida case; and it also makes this somewhat different, I suppose, from the case that was just decided in the Tenth Circuit.

But this is not a situation for continuing violations, and this is not-these are not the facts that would support continuing violations. Continuing violations are not favorably thought of in the Tenth Circuit. There should be a discrete violation.

If there was no continuing violation, then indeed the fact that she did not get the stock in June or August of 1995 as promised-that would be the accrual date for the cause of action. And that means, if I'm understanding the facts correctly, that the Title VII part of this action falls. There is not sufficient to---not sufficient facts to show active misrepresentation that would allow her to think that it would be given at some later time.

***7** If she had been told, well, you don't have it in August '95 as promised, but if you'll just hold tight and not do anything, we'll give it to you in such and such a date---that's not the situation as I understand the facts.

So the ruling on summary judgment will be that the statute of limitations on the Title VII case has run. It accrued August of 1995, when she did not get the stock.

(Emphasis added). (Dkt. 87 Exh. G at 24-25).

West relies on the deposition testimony of Maxine Jones for the contention that she was more aware of the discrimination at West than Gosche. West argues that because Ms. Jones repeatedly complained of discrimination and approached the EEOC about filing a discrimination charge in 1986, she knew more than

Gosche who was allegedly twice promised the opportunity to purchase stock, which opportunities never came to fruition. Plaintiffs contend that West's interpretation of the deposition testimony of Ms. Jones regarding the extent of her knowledge of the pattern of discrimination is mistaken. West's counsel had knowledge of the testimony of Ms. Jones at the time of the hearing on July 21, 1998, because Ms. Jones was deposed on June 26, 1998.

Based on all of the above, the Court finds that the *Gosche* case does not have a significant bearing on this case. West took the position that the two cases were factually distinguishable in that Ms. Gosche had two actual promises to purchase stock whereas Ms. Jones never had an actual promise from the company. Ms. Gosche failed to timely pursue her rights with respect to never being given the opportunity to purchase stock. With respect to the *Gosche* court's finding that the continuing violation doctrine was inapplicable to her Title VII claim, this Court is not bound by that decision, nor is it convinced that the *Gosche* court was faced with the same factual scenario as that set forth in this case. Accordingly, the Court finds unpersuasive West's arguments regarding the application of the rulings in the *Gosche* case to this case.

*ANALYSIS of FACTS*

West urges that the time the clock should start ticking for a cause of action to accrue under Title VII could be a number of dates, but in no event after August 30, 1994, the last date West sold stock. As other possible dates, West suggests that the cause of action accrued in 1986 when Ms. Jones first went to the EEOC or on any of the dates Ms. Jones knew she was being discriminated against with regard to her "territory assignments and sales of stock." (Dkt. 68 at 3).

It is undisputed that no more stock was sold after August 30, 1994. Hence, as argued by West, no act of discrimination---the sale of stock-occurred either within two years of her filing the November 1996 EEOC charge or within three years of October 1997, the time this lawsuit was filed. West is correct that the appropriate date for the purpose of the statute of limitations "is not when Jones knew that West would sell no more stock." To the extent a previous order of this Court could be read to hold that the date the statute of limitations began to run is the date on which Plaintiffs discovered that stock was no longer being sold, it should not be so read. Whatever the Court ruled in a previous order regarding the timeliness of this suit, which was before Ms. Jones was deposed, is irrelevant given the facts and law presented at this juncture.

***8** West argues that the deposition testimony of Ms. Jones should be interpreted to find that she knew of the discrimination with regard to sale of stock long before 1996 when she filed the EEOC complaint. Plaintiffs, of course, argue to the contrary. After reviewing the testimony and exhibits as set forth at great length above, the Court is inclined to adopt Plaintiffs' interpretation of the facts.

It seems that Ms. Jones was saying that although she had a hunch that West sold stock to predominately men, with the exception of Margaret Daly, she had no way of knowing this was happening until after the company was sold, which caused certain information to surface. She testified that certainly the criteria for determining who should receive stock was purposefully kept a secret. The only way of knowing who had received stock was through rumors and employees' boasting at sales meetings about persons receiving stock. This behavior was frowned upon, if not forbidden, by the powers that be or were at West. On the one hand, stock sales were supposed to remain secret, but on the other hand, one could not help overhearing discussions about others' receipt of stock. In any event, rumors or suspicions cannot form the requisite knowledge on her part to launch an EEOC charge.

West places great importance on Ms. Jones' remark that she did not wait until 1996 to go forward with her complaint to the EEOC but rather presented her case to the EEOC in 1986. West also emphasizes that Ms. Jones remarked that had she filed her charge in 1986, the discriminatory sale of stock would have been resolved by now. In weighing these statements, the Court believes that Ms. Jones was simply acknowledging that in hindsight, had she had sufficient grounds to bring a claim for discrimination based on the sale of stock, this lawsuit would have been decided a long time ago. The crux of the matter is that she did not have sufficient grounds to bring a claim for discrimination based on the sale of stock either in 1986 or at any of the times she highly suspected West discriminated against women in the sale of stock.

As pointed out by Plaintiffs, "[t]here is no evidence that Jones ever discussed West stock during her 1986 visit to the EEOC where she discussed West's allegedly discriminatory territory assignments." (Dkt. 86 at pg. 7, citing Depo. of Jones at 135-138). The file reveals that Ms. Jones did not complain about the opportunity to

purchase stock until her EEOC charge filed in November 1996. Ms. Jones had been issued KEIP and was led to believe that she was on track for obtaining stock, and "the next step would be to get stock." (Dkt. 86 at 7-8, citing Depo. of Jones at 59, 60, and 66). Yet, Ms. Jones had never actually been promised stock or an opportunity to purchase it. Believing one is "on track" for stock is not the same as being offered stock. It is credible that with the sale of the company in June 1996, employees were freer to discuss whether they actually were offered an opportunity to purchase stock. Hence, more information was released from which Ms. Jones could file a charge with the EEOC and thereafter a complaint in district court.

***9** West makes much ado about Ms. Jones' admission that she could have had the whole situation remedied back in 1986 had she filed a charge with EEOC then. Contrary to its assertions, Ms. Jones' testimony given in June 1998, at which her own counsel did not have the opportunity to clarify any of West's questioning, does not indicate that she had sufficient knowledge regarding the purchase of stock to bring a complaint to the EEOC before June 1996. *See Sturniolo v. Shaffer,* 15 F.3d 1023, 1025 (11th Cir.1994) ("mere suspicion, unsupported by personal knowledge of discrimination" is insufficient to start the running of the EEOC charge filing period); *see also Cocke v. Merrill Lynch & Co.,* 817 F.2d 1559, 1561 (11th Cir.1987).

*CONTINUING VIOLATION DOCTRINE*

Whether a Title VII discrimination case based on a pattern and practice of selling stock to male employees rather than female employees warrants the application of the continuing violation doctrine presents a question of first impression. The Court finds the cases denying the application of the continuing violation doctrine factually distinguishable. The criteria analyzed in *Delaware State College v. Ricks,* 449 U.S. 250 (1980), and *Bazemore v. Friday,* 478 U.S. 385 (1986), support applying the continuing violation doctrine to this particular Title VII case.

*Ricks* is distinguishable from the instant case. In *Ricks,* a case involving the denial of tenure, the Supreme Court held that termination of employment is a "delayed, but inevitable, consequence of the denial of tenure." *Id.* at 257-58. The Court wrote that "Congress has decided that time limitations periods commence with the date of the 'alleged unlawful employment practice.' " *Id.* at 259, quoting 42 U.S.C. § 2000e-5(e). In other words, no present violations or discrimination occurred after Mr. Ricks received notification that his tenure had been denied. It was the policy of the college to issue a one-year termination contract providing the employee with one year to prepare for the eventual departure. The fact that Mr. Ricks was not actually terminated until over one year after he received notification that tenure had been denied, did not extend the commencement of the limitations period to the last date of his employment.

*Bazemore* involved a Title VII claim for salary disparities between blacks and whites. The Supreme Court held that the perpetuation of salary disparities constituted a continuing violation of Title VII. "Each week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII, regardless of the fact that this pattern was begun prior to the effective date of Title VII." *Id.* at 395-96.

In *Beavers v. American Cast Iron* Pipe Co., 975 F.2d 792 (11th Cir.1992), the Eleventh Circuit discussed the distinctions between *Bazemoe* and *Ricks. Beavers,* 975 F.2d at 796-97. "As these cases demonstrate, the Supreme Court clearly recognizes the distinction this court has drawn between the present effects of a one-time violation-as in *Richks*-and the continuation of the violation into the present---as in *Bazemore.*" *Id.* at 797. In *Beavers,* the court held that the continuing violation doctrine applied to a company policy which failed to provide medical and dental benefits to the parent who did not have custody of the children. "[W]e hold that each week divorced men are denied insurance coverage for their nonresident children while similarly situated divorced women, who are apparently far more likely to have custody of their children, receive such coverage constitutes a wrong arguably actionable under Title VII." *Id.* at 798.[FN5]

***10** *Roberts v. Gadsden Memorial Hospital,* 835 F.2d 793 (11th Cir.1988), *modified on other grounds,* 850 F.2d 1549 (11th Cir.1988), which was decided before *Beavers,* involved a failure to promote claim. There, the plaintiff asserted claims under two different instances, one in 1978 and one in 1981, in which he was not promoted. The court emphasized that the subject matter of the discrimination was different in each event and that the "only commonality between the two incidents was the fact that they both had the same result: Roberts did not receive a promotion opportunity on fair terms." 835 F.2d at 800. The court found time-barred only the 1978 incident. 850 F.2d at 1551.

The present case presents a situation much more akin to the disparate salary and insurance coverage claims than those of failure to promote and denial of tenure. The continuing violation doctrine lends itself to situations in which the employer has "committed a series of discrete acts which amount to a practice of discrimination" and the EEOC filing requirement cannot bar an employee's suit "unless the employee has waited" more than the statutory time period from the last occurrence of one of the discrete acts. *EEOC v. Union Camp Corp.,* 7 F.Supp.2d 1362, 1372 (S.D.Ga.1997). Each time a stock dividend was paid and the payment of the stock redemptions at the time West was sold constitutes discrete acts of discrimination. Thus, this case does not fall into the category of a failure to promote claim "arising out of an injury which is 'continuing' only because a putative plaintiff knowingly fails to seek relief" *Roberts,* 850 F.2d at 1550.

*EQUITABLE MODIFICATION*

Even if the continuing violation doctrine does not apply, the principles of equitable modification would apply to the time period before filing a charge with the EEOC. "Under equitable modification, a limitations period does not start to run until the facts which would support a charge of discrimination are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *Sturniolo v. Sheaffer Eaton. Inc.,* 15 F.3d 1023, 1025 (11th Cir.1994) (citing *Reeb v. Economic Opportunity Atlanta Inc.,* 516 F.2d 924, 931 (5th Cir.1975)).

Although Ms. Jones suspected that stock was being sold to predominantly male employees, it did not become apparent that this was the policy of West until after the company was sold. The fact that Ms. Jones was a woman who suspected discrimination in the sale of stock, which is mere suspicion unsupported by personal knowledge of discrimination, will not constitute pretext. *Sturniolo,* 15 F.3d at 1026. Thus, Ms. Jones' claims are not time-barred as any tolling period would commence some time after the sale of the company in June 1996.

The equitable doctrine of laches has been held to be applicable to Title VII actions brought by private plaintiffs. See *Howard v. Roadway Express, Inc.,* 726 F.2d 1529, 1532 (11th Cir.1984) (citing *Bernard v. Gulf Oil Co.,* 596 F.2d 1249, 1256 (5th Cir.1979), *aff'd on other grounds,* 452 U.S. 89 (1981)). In *Howard,* however, the court held that "Howard's failure to file his Title VII claim until completion of the EEOC process was not inexcusable delay and cannot support the application of laches." *Id.* at 1533. Unlike the facts in this case, the facts of *Howard* involve a plaintiff's reliance on the administrative process prior to a no-reasonable-cause determination. Moreover, as pointed out by Plaintiffs, "no court has ever barred a Title VII or Equal Pay Act claim" based on laches during the pre-charge versus post-charge delay. *See Ashley v. Boyle's Famous Corned Beef Co.,* 66 F.3d 164, 168-69 (8th Cir.1995) (en banc) ("with a federal cause of action for which Congress has prescribed an express statute of limitations" laches may not "trump a federal statute of limitations governing a claim that seeks both legal and equitable remedies"). In any event, there is no evidence that West or Thomson has been prejudiced. Consequently, the Court finds that laches does not bar this suit.

*CONCLUSION*

***11** The Court finds that the dates the 300-day limitation period for filing an EEOC charge commenced are either June 4, 1996, which was the last day a stock dividend was paid, or June 20, 1996, the last date of stock redemption payments. Thus, the filing of the EEOC charge on November 6, 1996, was timely.

Based on the foregoing, it is ORDERED AND ADJUDGED that Defendant's Renewed Motion for Partial Summary Judgment (Dkt.67) is DENIED.

DONE AND ORDERED.

FN1. The parties agree that the claims of all of the plaintiffs are based on Maxine Jones' EEOC complaint. Only Maxine Jones filed an EEOC complaint. Each of the additional plaintiffs rely on the EEOC charge filed by Maxine Jones pursuant to Title VII's "single-filing rule, [which is] ... [a]s long as at least one named plaintiff timely filed an EEOC charge, the precondition to a Title VII action is met for all other named plaintiffs and class members." *Jones v. Firestone Tire and Rubber Co.,* 977 F.2d 427, 532 (11th Cir.1992) (quoting *Griffin v. Dugger,* 823 F.2d 1476, 1482 (11th Cir.1987)).

FN2. This partial summary judgment seeks a ruling as to the Title VII putative class action claim only. The claim based on the Equal Pay Act is unaffected by this order.

FN3. Ms. Jones believed Mr. Bateman was a member of the board of directors at West. (Dkt. 55, Exh. 2 at 123).

FN4. Pages 121 through 124 of Ms. Jones' deposition are missing from Docket 68, Exhibit A.

FN5. See *Mitchell v. Jefferson County Board of Education,* 936 F.2d 539, 548 (11th Cir.1991), as another case in which the Eleventh Circuit applied the continuing violation doctrine to an action under the Equal Pay Act. The court held that the claim did not accrue at the time the salary schedule was first implemented. See also *Calloway v. Partners National Health Plans,* 986 F.2d 446, 449 (11th Cir.1993), in which the Eleventh Circuit concluded that "race based, discriminatory wage payments constitute a continuing violation of Title VII."