

# CPLR 207: Statute of Limitations Not Tolled for Period of Absence from State When Personal Jurisdiction Was Obtainable Over Defendant Through Expedient Service

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preferable. In view of the prevalence of long-arm statutes, a defendant will probably be subject to process in the state where injury occurred. Additionally, the place of injury is probably the place of the plaintiff's residence.<sup>9</sup> It is therefore reasonable to bind a nonresident plaintiff to the limitations period of the place of injury.

*CPLR 207: Statute of limitations not tolled for period of absence from state when personal jurisdiction was obtainable over defendant through expedient service.*

CPLR 207 provides that if, after a cause of action has accrued against a person, he departs from the state and remains continuously absent therefrom for four months or more, the period of his absence is not a part of the time within which the action must be commenced. The plaintiff cannot rely on a CPLR 207 toll, however, if personal jurisdiction could have been obtained despite the defendant's absence from the state.<sup>10</sup>

In *Goodemote v. McClain*,<sup>11</sup> the defendant left New York for a fourteen-month period eighteen months after she was involved in a New York automobile accident. The Appellate Division, Fourth Department, unanimously held that the statute of limitations was not tolled for the period of her absence from the state because the plaintiff could have obtained personal jurisdiction over the defendant at any time by obtaining an *ex parte* court order for expedient service under CPLR 308(5).<sup>12</sup>

Since the broad discretionary reach of CPLR 308(5) may be utilized whenever there is a jurisdictional basis, this decision should severely curtail the instances of tolls for absence under CPLR 207.

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<sup>9</sup> See Gegan, *supra* note 2, at 69.

<sup>10</sup> CPLR 207(3).

<sup>11</sup> 40 App. Div. 2d 22, 337 N.Y.S.2d 79 (4th Dep't 1972).

<sup>12</sup> *Id.* at 24, 337 N.Y.S.2d at 82, citing *Dobkin v. Chapman*, 21 N.Y.2d 490, 236 N.E.2d 451, 289 N.Y.S.2d 161 (1968), discussed in *The Quarterly Survey*, 43 ST. JOHN'S L. REV. 302, 310 (1968); *Fishman v. Sanders*, 15 N.Y.2d 298, 206 N.E.2d 326, 258 N.Y.S.2d 380 (1965). "Under such circumstances service on the Secretary of State under section 254 of the Vehicle and Traffic Law did not confer jurisdiction over the defendant nor operate to toll the statute of limitations." 40 App. Div. 2d at 24, 337 N.Y.S.2d at 82. The plaintiff served the Secretary of State pursuant to § 254, which provides for service of process on residents who leave the state after an accident and remain absent therefrom for thirty days continuously. The copy of the summons and complaint mailed to the defendant's last known address was returned with the postmaster's notation that the forwarding address had expired. The defendant was served personally in New York shortly after the statute of limitations had run.

Pursuant to CPLR 308(5), the court may order service in any reasonable manner when service under CPLR 308(1), (2), and (4) is impracticable. CPLR 313 provides that a New York domiciliary or a person subject to New York jurisdiction under CPLR 301 or 302 may be served outside the state in the same manner as service is made within the state.