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General Municipal Law Section 50-e: New Period for Filing Notice of Claim Allowed in Fraud Action Extraneous to the Original Tort

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since a summons and complaint may not be served until thirty days after the filing of a notice of claim,[25] the plaintiff urged that such statutory stay should not be included within the running of the statute of limitations. The court ruled for plaintiff on both points and, pursuant to CPLR 204(a), extended the statute of limitations for a period equal to the time lost through the stay of the proceedings by the court and the statutory prohibition.

It is also interesting to note that many authorities, such as the Transit Authority, have separate statutes of limitations rather than a standard limitation as provided in Section 50-i of the General Municipal Law. In the instant case, the statute of limitations for the Transit Authority is one year and thirty days as opposed to one year and ninety days for city or municipal governments.[26] A statute of limitations applicable to all municipalities and public authorities would be more expedient and reasonable.

General Municipal Law Section 50-e: Amending notice of claim subsequent to expiration of filing period.

As a condition precedent to the right to maintain an action against a public corporation, *e.g.*, city, town or municipality, a notice of claim must be filed within ninety days after the claim accrues.[27] The notice of claim filed in *Montana v. Incorporated Village of Lynbrook*[28] was defective because it failed to specify the damage and the manner in which the claim arose. The court, in accordance with the discretion established by Section 50-e of the General Municipal Law, allowed a subsequent amendment to the notice of claim.[29] A construction of the provisions permitting amendment of most faulty filings unless prejudice is shown against the public corporation, will, in many cases, prevent hardship to a claimant. The rule of thumb is to file a notice of claim in accordance with whatever facts are available, concentrating on filing within the ninety-day period rather than strict compliance with the required contents.

General Municipal Law Section 50-e: New period for filing notice of claim allowed in fraud action extraneous to the original tort.

In *Orsell v. Board of Educ.*,[30] the infant plaintiff, upon requesting information from defendant's representative regarding a

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[25] N.Y. PUB. AUTH. LAW § 1212(1).
[26] *Compare* N.Y. PUB. AUTH. LAW § 1212, *with* N.Y. MUNIC. LAW § 50-i.
[27] N.Y. MUNIC. LAW § 50-e.
[28] 23 App. Div. 2d 585, 256 N.Y.S.2d 651 (2d Dep't 1965).
[29] N.Y. MUNIC. LAW § 50-e(6).
[30] 23 App. Div. 2d 703, 256 N.Y.S.2d 970 (3d Dep't 1965).

claim against the Board of Education, was told that no notice of claim was necessary until he had recovered from all the injuries sustained. Such inquiry was made well within the ninety-day filing period but the misrepresentation effectively precluded plaintiff from filing a timely notice of claim.[31] There are statutory provisions allowing filing of a late notice of claim. A request to file a late notice, however, must be made within one year after the accrual of the cause.[32]

The court treated the plaintiff's cause not as one requesting a mere extension to file a notice of claim, but rather considered the fraud practiced on the plaintiff as a separate wrong for which the defendant was responsible. Thus, the court allowed the plaintiff to file a late notice of claim solely on the basis of the defendant's fraud. The plaintiff must still establish the fraud cause of action, but once he is successful the damages may be calculated with regard to the original wrong for which the fraudulent misrepresentations precluded recompense. Since fraud was a separate and distinct tort under these circumstances, the holding is consistent with the current trend of the New York courts.[33]

Article 3 — Jurisdiction and Service, Appearance and Choice of Court

CPLR 301: "Doing business" in New York.

Although a foreign corporation not subject to the court's jurisdiction under the "long-arm" statute (CPLR 302) must be "doing business" or "present" in order to be subject to in personam jurisdiction in New York,[34] it appears that the "presence" requirement of prior case law, which served as a means for determining whether a corporation was "doing business," has been somewhat relaxed. By this it is not meant that "presence" has been abandoned as a standard, but rather that a liberal construction has been given to its meaning.

Significant among the cases heralding this trend is *Bryant v. Finnish Nat'l Airline.*[35] There, the plaintiff, a New York resident, was injured at a Paris airport as a result of the defendant's alleged negligence. The defendant, an unregistered foreign corporation, had no officer or director in the United States and used no Amer-

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[31] N.Y. Munic. Law § 50-e(5).

[32] *Ibid.*

[33] DeVito v. New York Cent. Sys., 22 App. Div. 2d 600, 257 N.Y.S.2d 895 (1st Dep't 1965); Brick v. Cohn-Hall-Marx Co., 276 N.Y. 259, 11 N.E.2d 902 (1937).

[34] Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917).

[35] 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).