

# CPLR 203(b)(4): Inapplicable to Service on Out-of-State Sheriffs

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A means of reconciling the cases involves an analysis of the nature of the wrong. The rights and duties of the parties to a contract become fixed at the moment of agreement. It is reasonable that the statute of limitations should run from that instant. In the case of a tort, however, each additional breach of obligation will support a new action. A continuing trespass then, would give rise to a cause of action each moment it exists. Thus, the statute could never expire since at any time the injured party could recover damages for the statutory period immediately preceding the inception of the cause of action.

*CPLR 203(b)(4): Inapplicable to service on out-of-state sheriffs.*

In *Bergstresser v. McCraig*,<sup>7</sup> an action resulting from an automobile accident, defendant, a Florida resident, moved to dismiss the complaint on the ground of the statute of limitations. Plaintiff countered that his service of the summons and complaint on the sheriff of a Florida county was sufficient to extend the statute of limitations by sixty days under CPLR 203(b)(4). The court held that 203 was not intended to be applied to out-of-state sheriffs. Therefore, service of process on a sheriff of a foreign state is ineffectual for the purpose of obtaining the additional 60 days under CPLR 203(b)(4).

*Time requirement for commencement of tort action against municipality: Section 50-i of the General Municipal Law supersedes all inconsistent acts.*

In *Hlanko v. New York City Housing Authority*,<sup>8</sup> an action to recover damages for personal injuries was commenced within one year and ninety days from the accrual of the cause of action. The defendant moved to dismiss on the ground that the action was time-barred, citing as authority Section 157 of the Public Housing Law.<sup>9</sup> The court noted that General Municipal Law § 50-e<sup>10</sup> superseded the Public Housing Law with respect to the time for the service of the notice of claim.<sup>11</sup> Moreover, it

<sup>7</sup> 44 Misc. 2d 237, 253 N.Y.S.2d 445 (Sup. Ct. 1964).

<sup>8</sup> 44 Misc. 2d 365, 253 N.Y.S.2d 706 (Sup. Ct. 1964).

<sup>9</sup> Section 157 provides, *inter alia*, that a suit against the authority shall not be commenced before thirty days from the service of the notice of claim nor after one year from the accrual of the cause of action.

<sup>10</sup> Section 50-e provides for a ninety-day period within which to file a notice of claim when one is required.

<sup>11</sup> *Hlanko v. New York City Housing Authority*, 44 Misc. 2d 365, 253 N.Y.S.2d 706 (Sup. Ct. 1964), citing *Robinson v. New York City Housing Authority*, 12 Misc. 2d 200, 176 N.Y.S.2d 700 (Sup. Ct. 1958), *aff'd*, 8 App. Div. 2d 747, 188 N.Y.S.2d 262 (2d Dep't 1959), *aff'd*, 7 N.Y.2d 908, 165 N.E.2d 425, 197 N.Y.S.2d 476 (1960).