St. John's Law Review

Volume 39
Number 2 *Volume 39, May 1965, Number 2*

Article 20

Time Requirement for Commencement of Tort Action Against Municipality: Section 50-i of the General Municipal Law Supersedes All Inconsistent Acts

St. John's Law Review

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*,[7] 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*,[8] 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citing as authority Section 157 of the Public Housing Law.[9] The court noted that General Municipal Law § 50-e[10] superseded the Public Housing Law with respect to the time for the service of the notice of claim.[11] Moreover, it

---

[7] 44 Misc. 2d 237, 253 N.Y.S.2d 445 (Sup. Ct. 1964).

[8] 44 Misc. 2d 365, 253 N.Y.S.2d 706 (Sup. Ct. 1964).

[9] 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.

[10] Section 50-e provides for a ninety-day period within which to file a notice of claim when one is required.

[11] 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).

rejected defendant's contention that General Municipal Law § 50-i did *not* supersede the Public Housing Law with respect to the time for commencement of the action. The court reasoned that "logic leads to the conclusion that Section 157 of the Public Housing Law is also superseded . . . concerning the time to commence the suit." [12]

At first glance, the decision appears to be nothing more than a determination that one statute supersedes another. However noteworthy that may be, the case should alert the practitioner to the significance of the following: One, Section 50-e of the General Municipal Law must be read in conjunction with section 50-i; two, subdivision (2) of section 50-i effectively eliminates the problem of any inconsistent statute although not expressly repealing any of them. It seems clear, therefore, that in all cases founded on a theory of municipal tort liability, reliance may not be predicated upon any statute which is inconsistent with the time provisions of Sections 50-e and 50-i of the General Municipal Law.

One caveat seems appropriate with respect to suing a municipality, viz., time is always of the essence since it seems that there will be no deviations permitted, no matter how slight, from the provisions of Sections 50-e and 50-i of the General Municipal Law.

CPLR 203(e):[13] *Lack of notice in original answer of "claims" interposed in amended answer prevents "relation back."*

In a recent case,[14] the plaintiff served a complaint in January 1962. The cause of action contained therein was based on a sale which occurred in 1960. Defendant's answer contained no counterclaim. However, in an amended answer, interposed in June 1964, defendant asserted counterclaims which alleged conversion by plain-

---

[12] Section 50-i prohibits suit prior to thirty days from the service of a notice of claim, or after one year and ninety days from the accrual of the cause of action. Hlanko v. New York City Housing Authority, *supra* note 11, at 365, 253 N.Y.S.2d at 708. It should be noted that Sections 50-e and 50-i of the General Municipal Law deal *only* with tort liablity and, therefore, in cases which are founded, for instance, on breach of contract, the statute will not apply. The reason for this is that the legislature has not seen fit, as yet, to enact a unifying provision with respect to *all* causes of action against a municipality. Regrettably, therefore, in cases other than those founded on tort liability, resort must be had to the laws of each municipality to determine the time within which the action must be commenced.

[13] For a succinct discussion of the background of CPLR 203(e) see *The Biannual Survey of New York Practice,* 39 ST. JOHN'S L. REV. 178, 184-85 (1964).

[14] Nichimen & Co. v. Framen Steel Supply Co., 44 Misc. 2d 260, 253 N.Y.S.2d 713 (Sup. Ct. 1964).