long and 60 feet wide extending through lands of the plaintiff Bethlehem Steel Corporation more fully bounded and described in deeds recorded in:

(A) Franklin County Deed Book Volume 508, Page 369, dated July 1, 1954:
(B) Franklin County Deed Book Volume 508, page 409, Dated January 3, 1957;
(C) Franklin County Deed Book Volume 508, page 372, dated July 15, 1954;
(D) Franklin County Deed Book Volume 508, page 382, dated March 31, 1954;
(E) Franklin County Deed Book Volume 509, Page 609, dated January 10, 1959;
(F) Franklin County Deed Book Volume 510, page 44, dated January 26, 1959;
(G) Franklin County Deed Book Volume 508, page 352, dated December 17, 1953;
(H) Franklin County Deed Book Volume 508, page 406, dated April 1, 1957.

NOW, THEREFORE, final judgment in favor of the plaintiff Bethlehem Steel Corporation is herewith entered and the defendant Penn Central Corporation is barred from asserting any right, lien, title or interest in the said lands of the plaintiff inconsistent with its fee simple title.

Costs to be paid by the defendant.

KEGERREIS VS. EASTON, C.P. Franklin County Branch, No. A.D. 1987-216

Appeal - District Justice - Failure to Give Notice

1. Where defendant alleges a meritorious defense, plaintiff demonstrates no prejudice and the circumstances surrounding non-compliance with procedural rules are explained, defendant may proceed with his appeal.

J. Dennis Guyer, Esquire, Attorney for Defendant
John W. Frey, Esquire, Attorney for Plaintiff

OPINION AND ORDER

KAYE, J., November 4, 1987:

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing with the Department of State of the Commonwealth of Pennsylvania, on November 19, 1987, a fictitious name amendment for Denwick R/C Hobbies and Raceway, with its principal place of business at 5601 Lincoln Way East, Fayetteville, PA 17222. The names and addresses of the persons owning or interested in said business are Dennis S. Dragas, 8760 Orlando Drive, Waynesboro, PA 17268 and Charles W. Gardenhouse, Jr., 203 Baker Road, Fayetteville, PA 17222. The party having withdrawn from the said business is Omar P. Benchoff, 203-F Baker Road, Fayetteville, PA 17222.

Stephen E. Patterson, Esq.
PATTERSON, KAMINSKI, KELLER & KIERSZ
239 E. Main St.
Waynesboro, PA 17268

3/4/88

Notice is hereby given that All-Towne Realty, Inc. on February 19, 1988, caused to be filed in the Department of State of the Commonwealth of Pennsylvania its articles of incorporation to be organized under the Business Corporation Law, approved the 5th day of May, 1933, P.L. 364, as amended. The purposes of the corporation are to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania, and the corporation is incorporated under the provisions of the said Business Corporation Law of the Commonwealth of Pennsylvania.

GRAHAM AND GRAHAM
3 North Second Street
Chambersburg, PA 17201

3/4/88

NOTICE IS HEREBY GIVEN, that Articles of Incorporation have been filed with the Corporation Bureau, Department of State of the Commonwealth of Pennsylvania, on February 24, 1988, for the purpose of obtaining a certificate of incorporation of a business corporation which was organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of May 5, 1933, P.L. 364, as amended.

The name of the corporation is:

CHIROPRACTIC ASO, INC.

The purpose for which it was organized is to engage in any and all lawful acts concerning any and all lawful business for which corporations may be organized under the Business Corporation Law of 1933, as amended.

JOHNSON, DUFFIE, STEWART & WEIDNER
Third and Market Streets
Lemoyne, PA 17043

3/4/88

NOTICE OF WINDING-UP PROCEEDING
MAJAY, INC.

Notice is hereby given that Majay, Inc., a Pennsylvania corporation with principal offices located at 438 Lincoln Way East, Chambersburg, Pennsylvania, has filed a Certificate of Election to Dissolve and is winding-up its business. All communication or inquiry should be submitted to: Law Offices of Welton J. Fischer, 550 Cleveland Avenue, Chambersburg, PA 17201.

3/4, 3/11/88

NOTICE OF WINDING-UP PROCEEDING
GALE DIEHL SPORTING GOODS, INC.

Notice is hereby given that Gale Diehl Sporting Goods, Inc., a Pennsylvania corporation with principal offices located at 54 Lincoln Way West, Chambersburg, Pennsylvania, has filed a Certificate of Election to Dissolve and is winding-up its business. All communication or inquiry should be submitted to: Law Offices of Welton J. Fischer, 550 Cleveland Avenue, Chambersburg, Pennsylvania 17201.

3/4/88, 3/11/88

NOTICE IS HEREBY GIVEN the in compliance with the requirements of Section 1004 of the Business Corporation Law, act of May 5, 1933 (P.L. 364) (15 P.S. §2004), CRAIG SEALING, INC., a Maryland corporation with principal offices located at Rt. 6, Box 33, Hagerstown, Maryland 21740, and its registered office in the Commonwealth of Pennsylvania at 257 Lincoln Way East, Chambersburg, Franklin County, Pennsylvania 17201, has this 25th day of February, 1988, filed an application with the Corporation Bureau, Department of State, Commonwealth of Pennsylvania, for a Certificate of Authority - Foreign Business Corporation.

The business the corporation proposes to conduct within this Commonwealth is the construction, paving, sealing and maintenance of highways, driveways, walkways, etc.

Charles E. Creager, Esq.
Creager & Newhouse, P.A.
1329 Pennsylvania Avenue
P.O. Box 1417
Hagerstown, Maryland 21741
Attorney for Craig Sealing, Inc.

3/4/88

On August 3, 1987, defendant filed a timely notice of appeal from the July 10, 1987 judgment of a District Justice in a civil proceeding. The notice was filed in the Office of the Prothonotary, pursuant to Pa. R.C.P. D.J. No. 1002. However, for reasons hereinafter set forth, he failed to serve notice thereof on plaintiff or the District Justice or to file proof of service thereof until August 25, 1987 as required by Pa. R.C.P. D.J. No. 1005B.

Thereafter, on August 27, 1987, plaintiff filed a praecipe to strike the appeal pursuant to Pa. R.C.P.D.J. No. 1006 for failure to comply with Rule 1005B. On September 9, 1987, defendant petitioned the Court to open the judgment and to reinstate the appeal. Plaintiff filed an answer containing new matter in response thereto.

An evidentiary hearing was held on October 1, 1987, at the conclusion of which counsel were directed to submit memoranda of law regarding the sole issue in this case. As the Court has now received those memoranda, the matter is in a posture for disposition.

In his petition, defendant alleged that the notice of appeal was served late "[t]hrough natural human inadvertence or oversight caused by the relocation of [defendant's lawyer's] office . . ." (Petition ¶ 8). At the evidentiary hearing, defendant's counsel elaborated on the allegation. He testified that at the time of the docketing of the appeal on August 3, he was in the process of relocating his Greencastle office. After filing the appeal, the papers which were to be served on plaintiff and the District Justice were placed in a box which in turn was placed into what was to become the new office, but which apparently was not yet open.

On August 20, counsel received a telephone call at his Chambersburg office from defendant, the nature of which was an inquiry as to whether an appeal had been filed. Counsel replied that he believed that it had been filed, and then checked the Prothonotary's docket and found that it had indeed been filed.[1] It was also noted that affidavits of service of the notice of appeal were not filed.

[1] Though not entirely clear from the testimony, we would assume that the testimony indicates that the physical act of filing had been entrusted to one of counsel's employees; or perhaps was one of numerous filings made contemporaneously, either of which could account for the lack of certainty regarding knowledge of the filing.

Counsel thereupon attempted unsuccessfully to telephone plaintiff about this, and did discuss this matter with John W. Frey, Esquire on August 25, 1987. In that conversation, Attorney Frey indicated that he intended to move to strike the appeal for non-compliance with Pa. R.C.P.D.J. No. 1005B. The notices were mailed that day (August 25), and counsel for plaintiff successfully caused the appeal to be stricken by praecipe filed on August 27.

Initially, we will note that we disagree with the analysis of both parties regarding the current procedural posture of this case, in that both have treated the case as one in which the Court has to determine if it is appropriate, in the factual setting above, to open a default judgment, and that a review of the numerous decisions on that issue is appropriate. As we perceive the matter, the only issue is whether the appeal should be reinstated, as no judgment by default was entered.

As a point of departure we note that the rules pertaining to appeals from District Justice judgments provide, inter al., as follows:

> Upon failure of the appellant to comply with Rule 1004A or Rule 1005B, the prothonotary shall, upon praecipe of the appellee, mark the appeal stricken from the record. *The Court* of common pleas may reinstate the appeal upon *good cause shown.*
>
> Pa. R.C.P.D.J. No. 1006
> [Emphasis added]

Thus, the sole question is whether the defendant has demonstrated "good cause" for reinstating the appeal.

Initially, we will note that provisions for reinstating an appeal from a District Justice's Judgment have been liberalized in recent years. Prior to this liberalization, failure to comply strictly with the rules in all respects compelled dismissal of the appeal. See, e.g. *Voynik v. Davidson,* 69 D&C 2d 267 (C.P. Beaver Co., 1975).

Thereafter, at least two things occurred:
1) The official comment to Pa. R.C.P.D.J. No. 1006 was amended so that the second sentence was omitted from the following, which is its form at the time of *Voynik, supra:* "This rule is intended to provide sanctions for failing to act within the time limits prescribed. The appeal should be reinstated only under exceptional circumstances."
2) In *Pomerantz v. Goldstein,* 479 Pa. 175, , 387 A.2d 1280, 1281 (1978), the Supreme Court held as follows:

" 'Procedural rules are not ends in themselves, but means whereby justice, as expressed in legal principles, is administered. They are not to be exalted to the status of substantive objectives . . . the niceties of procedure and pleading make fine intelligence games for lawyers, but should never be used to deny ultimate justice. This is the reason for our modern approach to rules of civil procedures.' "

[citations omitted]

Subsequent to the holding in *Pomerantz,* several decisions of our sister trial courts have reinstated appeals stricken for non-compliance with Rule 1005B. See, e.g. *Seiple v. Pitterich,* 35 D&C 3d 592 (C.P. Mercer Co., 1984), *Katz v. Smith,* 38 D&C 3d 488 (C.P. Adams Co., 1985).

However, both *Seiple* and *Katz* involved a situation in which, unlike the case *sub judice*, the notice of appeal was timely served, but either the affidavits of service were filed late *(Seiple),* or the complaint filed subsequent to the notice of appeal was unverified *(Katz).*

A more difficult question exists instantly, as defendant failed to notify either the District Justice or the plaintiff of the filing of the notice of appeal in the manner prescribed by the Rules not only outside the five (5) day period prescribed by the Rules, but also some fifteen (15) days after the expiration of the time for appeal and, of course, the explanation for the reason, i.e. human oversight, is not compelling.

Notwithstanding that we believe the issue herein is a close one, this Court is loath to deny a party his or her day in court due to a prodecural mis-step, which is what would occur if we were to deny the petition, absent fraud or other misconduct, or resultant prejudice to the opposing party. (By "prejudice", we do not simply mean the inconvenience and delay resulting from the petitioner's actions but, rather, a negative impact on the opposing party's ability to present its case which is attributable to non-compliance with the Rules).

It is further noted that:

> The proceeding on appeal shall be conducted de novo in accordance with the Rules of Civil Procedure that would be applicable if the action was initially commenced in the court of common pleas.
>
> Pa. R.C.P.D.J. 1007A.

Upon the taking of the appeal, therefore, *inter al.,* Pa. R.C.P. No. 126 came into play:

> The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

In a recent decision, this Court, Keller, P.J., cited the Supreme Court of Pennsylvania, as follows, in ordering the reinstatment of a complaint dismissed pursuant to local rules of court for failure of counsel by inadvertence to secure an order to extend the time within which to file a certificate of readiness:

> The trial of a lawsuit is not a sporting event where the substantive legal issues which precipitated the action are subordinate to the "rules of the game". A lawsuit is a judicial process calculated to resolve legal disputes in an orderly and fair fashion. It is imperative that the fairness of the method by which the resolution is reached not be open to question. A rule which arbitrarily and automatically requires the termination of an action in favor of one party and against the other based upon a non-prejudicial procedural mis-step, without regard to the substantive merits and without regard to the reason for the slip, is inconsistent with the requirement of fairness demanded by the Pennsylvania Rules of Civil Procedure. Rule 126 is not a judicial recommendation which a court may opt to recognize or ignore. Rather the rule is a statement of the requirement of fairness and establishes an affirmative duty Courts are bound to follow in applying all procedural rules whether they be statewide or local in origin.
>
> *DEARDORFF et al. v. SHEW et al.*
> 8 Franklin Co. L.J. 237, 239 (1987), citing *BYARD F. BROGAN v. HOLMES ELEC. PROT. CO. OF PHILA.,* 501 Pa. 234, 240, 460 A.2d 1093, 1096 (1983).

Defendant has alleged a meritorious defense, plaintiff has not demonstrated any prejudice nor wilful misconduct by defendant, and the circumstances surrounding the non-compliance with the Rules have been explained. Accordingly, the defendant will be permitted to proceed with the appeal.

ORDER OF COURT

November 4, 1987, the appeal filed by the above defendant is

reinstated.

SKILES v. SCHOEN AND NELSON, C.P. Fulton County Branch, No. 143 of 1982-C

Judgment Note - Execution - Act 6 - Residential Real Property - Farm

1. Act 6 applies to a farm which contains a dwelling house and otherwise meets the definition of residential real property.

2. Where the residence located on a farm is destroyed by fire, in reconstruction is intended, Act 6 continues to apply.

3. Where a writ of execution on real estate subject to Act 6 does not comply with the Act 6 notice provisions, the writ will be set aside.

Stanley J. Kerlin, Esq., Attorney for Plaintiff
James M. Schall, Esq., Attorney for Defendant

OPINION AND ORDER

BEFORE, KAYE, J., September 11, 1987:

A. PROCEDURAL HISTORY OF THE CASE

On June 7, 1982, Dwight M. Skiles, plaintiff, confessed judgment against the defendants, Elton W. Schoen and Scott H. Nelson, on a Judgment Note dated August 10, 1981. On August 18, 1986, plaintiff caused a Writ of Execution to issue directing the Sheriff of Fulton County to levy on and sell the property of the defendants to satisfy the judgment against them. On September 26, 1986, defendants filed a Petition for Rule to Show Cause Why the Writ of Execution Should Not be Set Aside. By Order of Court dated September 30, 1986, a Rule was directed to be issued upon plaintiff, Dwight M. Skiles, to show cause why the Writ of Execution should not be set aside. The Rule was issued on October 1, 1986.

On November 14, 1986, plaintiff filed an Answer to the aforesaid Petition and Rule. On June 8, 1987, an Order was entered setting June 23, 1987, as the date for a hearing on defendants' Petition and Rule to Show Cause Why the Writ of Execution Should Not Be Set Aside. Pursuant to stipulation of counsel, an Order was entered on June 23, 1987, rescheduling this