thus submits that defendants had more than 3 months notice to quit from the date of service thereof until the commencement of this action. In essence, plaintiff argues that the court should completely disregard the proceedings before the district justice regardless of whether or not any jurisdictional defects existed at that level.

The court does not believe that Rule 1007 can be interpreted as broadly as plaintiff wants it to be. The purpose of Rule 1007 is to permit the parties to start anew procedurally at the court of common pleas level. Upon appeal, either party may, *inter alia,* modify the amount in controversy, add new causes of action or parties, and bring counterclaims. The court of common pleas cannot, however, exercise jurisdiction over an appeal if the district justice did not have proper jurisdiction when she rendered judgment.

The available case law on this subject provides that the notice to quit required by Section 250.501 is jurisdictional and in the absence of strict compliance with the provisions of the above section, the district justice would not have authority to enter judgment for the landlord. *Pakyz v. Weiser et ux.,* 15 Adams L.J. 196 (1974); *Patrycia Brothers, Inc. v. McKeefrey,* 38 D.&C.2d 149 (1966). Since plaintiff failed to give defendants 3 months notice to quit pursuant to Section 250.501, District Justice Keebaugh did not have proper jurisdiction to hear the matter and render judgment for plaintiff. Accordingly, the judgment rendered by District Justice Keebaugh was defective and must be reversed. Since the court cannot assume jurisdiction from a defective judgment at the district justice level, defendants' petition to dismiss is granted.

Having dismissed the action for lack of jurisdiction, the court need not consider issues 2, 3, and 4.

ORDER OF COURT

March 30, 1989, it is ordered that the judgment of District Justice Betty M. Keebaugh entered on August 1, 1988, in the above captioned matter, is hereby reversed. Defendants' petition to dismiss for lack of jurisdiction is granted, and plaintiff's complaint is dismissed.

MELLOTT VS. PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, C.P. Franklin County Branch, No. 276 of 1987 C

No-Fault Benefits - Statute of Limitations - Timely Filing of New Matter

1. Where an answer to new matter was filed approximately three months late, the Court will strike the new matter where no prior Court approval for filing was obtained and the defendant suffers prejudice.
2. The two-year statute of limitations for no-fault benefits begins to run after the last payment of benefits.
3. A work loss is not sustained for purposes of the statute each time a victim misses a paycheck.

Robert E. Graham, Jr., Esquire, Counsel for Plaintiff

John L. McIntyre, Esquire, Counsel for Defendant

KELLER, P. J., December 15, 1988:

On December 3, 1984, the plaintiff, James W. Mellott, sustained injuries in an automobile accident. On December 28, 1984 he completed a Pennsylvania No-Fault Application for benefits. Until April 25, 1985, the defendant, Pennsylvania National Mutual Casualty Insurance Company, paid all medical expenses and wage loss benefits claimed to be resulting from the plaintiff's accident to that date. The defendant has refused to pay any additional medical expenses or wage loss benefits since that date.

The plaintiff alleges that on May 19, 1987, he was advised that his injuries had been misdiagnosed and he suffered a compression fracture of vertebrae at the C-7 level, concussions, contusions and bruises. The allegation of a compressed fracture was denied by the defendant and proof demanded. The allegation of plaintiff that on February 2, 1987 he gave notice of the fact of loss of wages and expenses incurred, together with reasonable proof of the same to the defendant, was denied.

The plaintiff's complaint was filed November 25, 1987, and served upon an agent for the defendant on December 15,1987. An answer containing new matter was filed January 25, 1988. This pleading had endorsed thereon the notice to plead to the new

matter within twenty (20) days from service all as required by the Rules of Civil Procedure. On May 4, 1988, at 9:45 a.m. the plaintiff's reply to new matter was filed.On May 4, 1988 at 10:31 a.m. and 10:32 a.m., the defendant's motion for judgment on the pleadings and a brief in support of the motion were filed. The defendant's praecipe for placement of the motion for judgment on the pleadings on the Argument List was filed the same date at 10:30 a.m., and on the same date the prothonotary listed the matter for argument at the Argument Court scheduled for June 28, 1988. On May 23, 1988 the defendant filed a preliminary objection in the nature of a motion to strike the plaintiff's reply to new matter on the grounds that the reply was filed in excess of twenty (20) days after the filing of the defendant's answer to new matter without leave of court and/or without obtaining an extension of time in which to file said reply; all in violation of Pa. R.C.P. 1026(a).

Counsel submitted briefs and argued defendant's motion for judgment on the pleadings on June 28, 1988. It was immediately evident to the Court that disposition of the defendant's motion for judgment on the pleadings depends upon whether the defendant's preliminary objection moving to strike plaintiff's reply was sustained or dismissed. Counsel agreed the Court would dispose of the preliminary objection on briefs so the motion for judgment on the pleadings could also be considered and disposed of at the same time. Supplemental briefs were ultimately submitted and these matters are now ripe for disposition.

Pa. R.C.P. 1026 provides inter alia:

> (a) . . . every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.

In the case at bar, at page 8 of the plaintiff's answer appears:

> TO: WITHIN NAMED PARTIES
>
> YOU ARE HEREBY NOTIFIED TO PLEAD TO THE ENCLOSED *NEW MATTER* WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.
>
> */s/ John L. McIntyre*
> Attorneys for Defendant

NOTICE OF ERRATIM

Please note, that page 14 of Volume 10 of the advance sheets, as published September 1, 1989, had several words missing from the last line. Therefore, said page is republished in this issue. It is the new version which it is the intention of the editor, to include in Bound Volume 10.

MANAGING EDITOR

BARNHART: First and final account, statement of proposed distribution and notice to the creditors of Louella M. Barnhart, Executrix of the last will and testament of Milton W. Barnhart, Jr., late of Washington Township, Franklin County, Pennsylvania, deceased.

DAVIS: First and final account, statement of proposed distribution and notice to the creditors of Jan G. Sulcove, Executor of the Estate of Genevieve A. Davis, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

HICKS: First and final account, statement of proposed distribution and notice to the creditors of Joel Edward Hicks and William Reed Hicks, Executors of the Estate of Joseph B. Hicks, late of Guilford Township, Franklin County, Pennsylvania.

LASHLEY: First and final account, statement of proposed distribution and notice to the creditors of Elizabeth L. Cook and John R. Lashley, III, Executors of the Estate of Thelma R. Lashley, late of Waynesboro, Franklin County, Pennsylvania.

Rhonda R. King
Deputy Clerk of Orphan's Court
Franklin County, Pennsylvania
9/8, 9/15, 9/22, 9/30/89

LEGAL NOTICES, cont.

The plaintiff's reply to new matter was filed approximately 100 days later or 80 days after the time period allowed by Pa. R.C.P. 1026(a). Counsel for the defendant correctly acknowledges that a plaintiff may be given and opportunity to file a reply to new matter at any time prior to the entry of judgment on the pleading and such a judgment may not be entered where the plaintiff has before its entry *properly* filed a reply (emphasis ours). In *Urban v. Urban*, 332 Pa. Super. 373, 378, 481 A.2d 662 (1984), the Superior Court held:

> The Rules of Civil Procedure in Pennsylvania allow twenty (20) days after service of a complaint for the filing of an answer. Pa. R.C.P. 1026. An answer not filed within the prescribed time may be stricken. Pa R.C.P. 1017 (b) 920 . The Twenty (20) day filing rule, however, is not mandatory but permissive. Where possible the Rules of Civil Procedure, including filing rules, should be construed in a liberal fashion to affect equitable results. Pa. R.C.P. 126; *Goldsborough v. City of Philaelphia*, 309 Pa. Super. 347, 455 A.2d 643 (1982). Thus, the filing of dilatory pleadings will generally be permitted where the opposing party has not been prejudiced by the delay. Much is left to the discretion of the lower court. *Fisher v. Hill*, 368 Pa. 53, 81 A.2d 860 (1951); *Commonwealth, Department of Transportation v. Pace*, 64, Pa. Commonwealth 273, 439 A.2d 1320 (1982).

The defendant *Urban* conceded their answer and new matter were filed over one year after the date prescribed by the rules, and she made no claim or indication that she had ever sought leave of court to file an amended or late pleading. The Court of Common Pleas found the plaintiff, *Urban*, prejudiced by the delay in filing of the answer and sustained the preliminary objection in the nature of a motion to strike. The Superior Court affirmed concluding that the record facts established prejudice resulted because of the extremely late filing.

In the case here under consideration, the plaintiff did not request leave of court to file his reply or for an extension of time within which to file the reply, and alleges no agreement between counsel for the late filing. Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. Pa. R.C.P. 1029 (b). Thus, the defendant would reasonably conclude when no reply was filed within the twenty (20) day limitation period or some reasonable time thereafter

that the plaintiff did admit paragraphs 15 through 30 of new matter. Defendant's motion for judgment on the pleadings includes, "I hereby certify that a true and correct copy of the within was mailed to all counsel of record this 2nd day of May 1988." On that date defense counsel also was entitled to consider the new matter paragraphs as having been admitted. In our judgment defendant's delay in seeking a motion for judgment on the pleadings from twenty days after January 25, 1988 until May 2, 1988 was an extraordinary display of forbearance. We conclude the defendant suffered prejudice by reason of the dilatory tactics of the plaintiff not later than the date of preparation and mailing of the motion for judgment on the pleadings and brief in support thereof. The happenstance of plaintiff's reply being logged into the Office of the Prothonotary sixteen minutes before the defendant's motion does not eradicate that prejudice.

We, therefore, conclude the preliminary objection must be sustained.

As a result of our decision to sustain the motion to strike, the motion for judgment on the pleadings must be addressed with those pleadings in the posture of a complaint and an answer containing new matter with all of the well-pleaded allegations of the new matter deemed admitted. The entire thrust of defendant's new matter is to plead that plaintiff's claim is time barred by virtue of Section 1009.106(c)(1) of the Pennsylvania No-Fault Motor Vehicle Insurance Act which provided:

> If no-fault benefits have not been paid for loss arising otherwise than from death, an action therefor may be commenced not later than two years after the victim suffers the loss and either knows, or in the exercise of reasonable diligence should have known, that the loss was caused by the accident, whichever is earlier. If no-fault benefits *have been paid* for loss arising otherwise than from death, an action for further benefits, other than survivors' benefits, by either the same or another claimant; *may be commenced not later than two years after the last payment of benefits.* (Italics ours)

In the case at bar, the pleadings establish that no death has been alleged, that no-fault benefits were paid as a result of the December 3, 1984 motor vehicle accident until April 25, 1985, and this action was not initiated until November 25, 1987. We, therefore, conclude the claim of James W. Mellott is barred by the provisions of the last

sentence of Subsection 106(c)(1) of the No-Fault Act, supra. This decision follows the guidance of our Superior Court in *Reed v. Pennsylvania National Mutual Casualty Insurance Company,* 342 Pa. Super. 517, 493 A.2d 710 (1985); *Holland v. Genaral Accident, Fire and Life Assurance Corp., Ltd.,* 339 Pa. Super. 433, 489 A.2d 238 (1985); *Bragg by Bragg v. State Automobile Insurance Association,* 350 Pa. Super. 257, 504 A.2d 344 (1986).

We note that in plaintiff's supplemental brief, he relies primarily upon *Lojek v. Allstate Insurance Company,* 357 Pa. Super. 142, 515 A.2d 601 (1986); wherein the Superior Court followed *Kamperis v. Nationwide Insurance Company,* 503 Pa. 536, 469 A.2d 1382 (1983) and *Guiton v. Pennsylvania National Mutual Insurance Company,* 503 Pa. 547, 469 A.2d 1388 (1983) holding that Section 106(c)(1) contemplates the commencement of an action not later than two years after the date appellant missed his next paycheck following the accident, and, consequently, a work loss is sustained each time the victim suffers economic detriment, i.e., misses a paycheck. Plaintiff contends that the two year Statute of Limitations of Section 106(c)(1) commences to run anew each time he suffered an economic detriment by missing a paycheck until the claim is totally barred by the expiration of four years from the date of the accident. This is an interesting and innovative argument but we conclude it must fail, for the distinguishing and controlling fact in *Lojek* is that the victim had not been paid any no-fault benefits for loss arising out of the motor vehicle accident. Consequently, the first sentence of Section 106(c)(1) applied rather than the second sentence as in the case at bar.

ORDER OF COURT

NOW, this 15th day of December, 1988:

1. The defendant's preliminary objection in the nature of a motion to strike is granted.

2. The defendant's motion for judgment on the pleadings is granted.

Exceptions are granted plaintiff.