In conclusion, we find that the Corvette was part of the inventory of Cambridge and thus subject to Valley's prior perfected security interest. National did not have a valid "purchase money security interest" thus its repossession and sale of the Corvette were improper, and Valley having stipulated that the proceeds of the sale by National would be a proper verdict, we find Valley is entitled to a verdict in the sum of $23,000 against National.

VERDICT

May 9, 1985, the court finds for Industrial Valley Bank & Trust Co., plaintiff, against First National Bank of Greencastle, defendant, in the amount of $23,000.

MELVILLE V. WAYNESBORO HOSPITAL, C.P. Franklin County Branch, A.D. 1984 - 115

Employment - Contract - Breach - Summary Judgment

1. Summary judgment may be granted only when the moving party proves there is no genuine issue of fact.

2. Even if facts are not in dispute, if the parties disagree about the inferences to be drawn from those facts, then a motion for summary judgment must be denied.

3. Employment contracts which do not fix a definite duration are not always terminable at will, but are sometimes construed as providing for a reasonable or some particular period inferred from the nature and circumstances of the undertaking.

John N. Keller, Esquire, Counsel for plaintiff

David H. Allshouse, Esquire, Counsel for defendant

Richard J. Walsh, Esquire, Counsel for defendant

OPINION AND ORDER

EPPINGER, P.J., May 16, 1985:

Elsie M. Melville (Melville), a Registered Nurse, was employed by Waynesboro Hospital (Hospital) for over twenty-seven years. In September, 1976, Melville was promoted to the position of Administrative Day Supervisor of Nursing.

Melville enjoyed this position but in June, 1977, at the Hospital's request, she agreed to serve as Temporary Director of Nursing with the Hospital's agreement that an active search would be made for a permanent Director of Nursing at which time Melville would be returned to her position as Day Supervisor of Nursing. On September 11, 1977, by written memorandum[1] from the Hospital's Administrator, E. L. Perun, Melville was named Director of Nursing. Perun continued the agreement with Melville that when a new Director of Nursing was found, she would return to her former position.

Perun left his position as Hospital Administrator in December, 1979, but before he left he made a memorandum of the Hospital's agreement with Melville which was placed in her personnel file. The memorandum stated that:

> "At the request of the Personnel Committee of the Board of Managers, I have talked with you and have asked you to temporarily take the Director of Nursing position. At this time we need your qualifications, knowledge, and rapport with the nursing department during the building program planning. This will be renewed yearly.
>
> It is my intention to revert your position back to Day Supervisor under a new Director of Nursing. It is important that a sound position be maintained for you in the future, for you are giving a great deal to the hospital and administration at a time we need you the most."[2]

On March 31, 1980, Melville wrote a letter to the Personnel Committee of the Board of Managers of the Hospital and to the New Hospital Administrator, William G. George, requesting that by May 1, 1980 she be returned to her former position as Day

[1] Exhibit A of Plaintiff's Complaint.
[2] Exhibit B of Plaintiff's Complaint.

Supervisor as per her agreement with the Hospital.[3] George responded by writing a letter to Melville dated April 1, 1980, stating in part that:

> "It is my understanding from our discussion that you will continue in the present position for at least six months providing that I act in good faith by aggressively recruiting for a Director of Nursing to relieve you at the earliest possible date . . . In return for this commitment on your part, I agree to offer you hospital employ with pay and position at least equivalent to that of a Day Nursing Supervisor."[4]

After receiving this letter, Melville remained as Director of Nursing, refrained from seeking other employment, obtained membership in the American Society for Hospital Nursing Service Administrators, maintained professional licenses and memberships and completed numerous continuing professional education programs.

On June 13, 1980, Melville was called to George's office where she was presented with a "Management Performance Appraisal."[5] The "Appraisal" stated in part that "as Mrs. Melville has expressed a desire to withdraw from this position (Director of Nursing), I do not feel it appropriate to develop any job related objectives at this time." No mention was made of any agreement between Melville and the Hospital providing that she would be returned to the job of Day Nursing Supervisor or its equivalent after withdrawal from the position as Director of Nursing. After reviewing the "Appraisal" with Melville, George demanded her resignation, which Melville contends is tantamount to firing her.

Elsie brought this action against the Hospital on September 7, 1984. The action is in two counts. Count 1 alleges breach of contract based on the September 11, 1977 and June 11, 1979 memorandums from Perun, the April 1, 1980 letter from George, and numerous oral representations from Perun.

[3] Exhibit C of Plaintiff's Complaint
[4] Exhibit D of Plaintiff's Complaint
[5] Exhibit E of Plaintiff's Complaint

Count 2 alleges breach of an implied contract based on the above-described representations and the Hospital's employee handbook[6] which states that at the end of an employee's six-month probationary period, if the relationship is agreeable to the employee and the Hospital, then the employee will be considered a permanent employee.

The matter before us is the Hospital's motion for summary judgment pursuant to Pa.R.C.P. 1035. The Hospital alleges the pleadings are closed and that there are no material facts in dispute. In the Hospital's memorandum of law in support of its motion it has agreed that where there is a dispute in the facts, for purposes of this motion only, it is assumed that Melville's version of those facts is true because the Hospital alleges it is entitled to judgment as a matter of law.[7]

Summary judgment may be granted only when the moving party proves there is no genuine issue of a material fact. *Pa. P. U. C. Bar Association v. Thornburgh,* 62 Pa. Cmwlth. 88, 93, 434 A.2d 1327, affd. 498 Pa. 589, 450 A.2d 613 (1981).

In ruling on a motion for summary judgment pursuant to Pa.R.C.P. 1035, we must "accept as true all well-pleaded facts and consider any admissions of record." *Dunn v. Teti,* 280 Pa. Super. 399, 401, 421 A.2d 782, 783 (1980); "resolving against the moving party any doubts as to the existence of a genuine issue of material fact." *Id.*, at 402, 783.

We must view the record in the light most favorable to the non-moving party, Melville, and give her the benefit of all reasonable inferences. *First Pennsylvania Bank v. Triester*, 251 Pa. Super. 372, 378, 380, A.2d 826, 829 (1977); *Pa. P. U. C. Bar Association v. Thornburgh,* supra. Our function is not to decide issues of fact, only to determine whether there is an issue of fact to be tried. *Matson v. Parking Service Corp.*, 242 Pa. Super. 125, 134, 135, 363 A.2d 1192, 1197 (1976). Even if the facts are not in dispute, but the parties disagree about the inferences to be drawn from the facts and what the parties' intention was as shown by the facts, then the motion for summary judgment must be denied. *Brua v. Bruce-Merrilees Electric Co.*, 63 D.&C. 2d 652, 653 (Lawrence Cty. 1973).

[6] Exhibit G of Plaintiff's Complaint.
[7] Memorandum of Law in Support of Defendant's Motion for Summary Judgment, P. 2.

The burden is on the Hospital to show that there is no genuine issue as to any material fact. *Carollo v. Forty-Eight Insulation, Inc.,* 252 Pa. Super. 422, 427, 381 A.2d 990, 992 (1977). We find that the Hospital did not sustain its burden and that a genuine issue of material facts exists. Summary judgment should "only be granted in the clearest of cases", *Dunn,* supra at 402, 783. This is not such a "clear" case.

The Hospital argues that, absent a specific statutory or contractual provision, an employment relationship is terminable by either party at any time and for any reason. Even if an employment contract exists, the Hospital claims it is presumed that the contract is terminable at will unless a definite period of time for its duration is specified. However, "contracts which do not fix a definite time for the duration of the relationship which they create are sometimes construed as providing for a reasonable time or some particular period inferred from the nature and circumstances of the undertaking." *Slonaker v. P.G. Publishing Co.,* 338 Pa. 292, 296, 13 A.2d 48, 51 (1940). In *Lubrecht v. Laurel Stripping Co.,* 387 Pa. 393, 397, 127 A.2d 687, 690 (1956), it was said:

> "The burden was, of course, upon the plaintiff who was asserting the contrary, to overcome the presumption that the contract was terminable at will . . . . This, he could do by proving the circumstances surrounding the execution of the contract, the situation of the parties, the objects they apparently had in view and the nature of the subject matter of the agreement from which the jury could infer that the contractual relationship contemplated by the agreement was to endure for a reasonable time or for some particular period."

The main issue of fact which must be resolved by a jury is whether any contract between Melville and the Hospital was to last for a reasonable time or a particular period. There are sufficient facts to enable a jury to find that a contract existed and that Melville was entitled to employment for a reasonable time or for some particular period. Perun promised Melville a sound position would be maintained for her and that her employment would be renewed yearly. George promised her that if she stayed as Director of Nursing for at least 6 more months, the Hospital would offer her a position and pay at least equivalent to a Day Supervisor of Nursing.

We deny the Hospital's motion for summary judgment.

ORDER OF COURT

May 16, 1985, upon consideration of defendant's motion for summary judgment, it is hereby ordered that the motion is denied.

MANON V. CHACONAS ET AL, C.P. Franklin County Branch, A.D. 1984 - 143

Default Judgment - Timely Answer - Extension of Time - Petition to Open

1. A petition to open default judgment is essentially an equitable proceeding is addressed to the sound discretion of the trial court.

2. The purpose of a default judgment is to speed the cause and prevent defendant from impending the establishment of the claim.

3. Where there is no evidence a defendant was attempting to impede the plaintiff's claim, the length of time in filing a petition to open are not as important.

John N. Keller, Esquire, counsel for plaintiff

F. Lee Shipman, Esquire, counsel for defendant, Borough of Waynesboro

Steven J. Fishman, Esquire, counsel for defendant, Borough of Waynesboro

William P. Douglas, Esquire, counsel for Nicholas Chaconas

OPINION AND ORDER

EPPINGER, P.J., June 20, 1985:

On January 23, 1984, Faerie Jo Lane Manon, Plaintiff, slipped and fell at the corner of West Main and North Potomac Streets in Waynesboro. She sued Nicholas J. Chaconas, owner of the adjoining property and the Borough of Waynesboro.