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.

On September 26, 1984, plaintiff's attorney entered a default judgment against the borough for its failure to file a timely answer. The borough's petition to open or strike the judgment is now before us. The calendar of events leading up to the entry of the default judgment is summarized as follows:

July 2 - plaintiff's complaint filed.

July 9 - the borough is served with the complaint and interrogatories. (Following receipt of the complaint, the borough notified its insurance carrier who contacted Attorney George F. Douglas to represent the borough. Douglas had already been retained by Chaconas.)

July 17 - Douglas requested an extension for filing an answer until other counsel could be retained by the borough.

July 18 - plaintiff's attorney grants an extension.

July 30 - plaintiff's attorney notifies the borough and its insurance carrier of the intent to take a default judgment if no further extension is requested. Thereafter borough retains Attorney Steven Fishman.

August 3 - borough's attorney requests an extension of time to file an answer.

August 6 - plaintiff's attorney grants an extension by letter.

September 10 - plaintiff's attorney mails notice of intent to take default judgment unless extension is requested.

September 14 - defendant's attorney, by letter, requests an extension of time for filing an answer to September 24. Extension is granted.

September 24 - defendant's attorney telephones plaintiff's attorney to inform plaintiff that he will meet with the borough representatives on September 26.

September 25 - telephone conversations between plaintiff's attorney and defendant's attorney. Settlement conference between the two attorneys cancelled because Chaconas' attorney will not make an offer.

September 26 - default judgment entered on behalf of plaintiff against borough. Notice mailed to borough and its attorney.

September 26 - borough's attorney travels to Waynesboro to have answer signed.

September 27, 28 - Rosh Hashonah (Jewish New Year).

October 1 - borough's answer to complaint filed.

October 25 - plaintiff's attorney telephoned borough's attorney that the case will be listed for trial on the issue of damages.

November 2 - borough's attorney files a petition to open or strike the judgment.

From the depositions in the case it is not clear what the understanding was between the plaintiff's and the borough's attorneys about the filing of the answer, except the plaintiff's attorney had extended the time to September 24. It seems that there was a planned settlement discussion between the two counsel scheduled for September 25 and that such conference was deemed to be fruitless because of the unwillingness of Chaconas' attorney to discuss settlement and so it was cancelled. It may also be concluded that the plaintiff's attorney had in his mind that the answer would be filed September 25, while the borough's counsel believed that having talked with the plaintiff's attorney he had until September 26 to file the answer because in a discussion with plaintiff's attorney on the 25th he said he was going to see borough officials on the 26th. The borough's counsel himself anticipated filing the answer on the 26th. But he said he went to Waynesboro to have the answer signed, and being pressed to return to Carlisle for a real estate settlement, he did not stop in Chambersburg to file the answer.

Accepting for arguments sake the statement of plaintiff's attorney that there was an understanding that the answer would be filed September 25th, taking the judgment on September 26 "could be interpreted . . . as the entry of a 'snap judgment' which the courts of this Commonwealth have consistently deplored." *Vorhauer v. Miller,* 311 Pa. Super. 395, 403, 457 A.2d 944, 948 (1983).

In *Kraynick v. Hertz,* 443 Pa. 105, 111, 277 A.2d 144, 147 (1971) our Supreme Court quoted from a decision of the Florida Supreme Court that the true purpose of the entry of a default judgment is to speed the cause, thereby preventing a dilatory or

procrastinating defendant from impeding plaintiff's claim. The procedure is not intended to furnish an advantage to plaintiff in reaching a judgment without a contest.

Something was going on in this case. The attorneys were in contact with each other. It was not a situation where the borough's attorney was doing nothing. The record indicates that some prodding was necessary by plaintiff's attorney by way of notices that he intended to take a default judgment, but just before the answer was filed the case had reached the stage where it was apparent it would be filed.

September 25, 1984 was a Tuesday. The judgment was taken and the notice mailed to the borough and the borough's attorney on Wednesday. It could not be expected that the notice would be received before Thursday. Thursday and Friday were days the borough's attorney celebrated Rosh Hashonah and he was especially involved in the celebration because he is the rabbi of a Jewish congregation in Carlisle. The Franklin County Court House was closed Saturday and Sunday, and the answer was filed on Monday. So we conclude the late filing of the answer is excused.

Had not plaintiff's attorney taken the default judgment, the case would have been ready for trial on the merits in the November 1984 term, assuming the case against the other defendant was ready.

And if the borough's attorney had filed his petition to open judgment in a more timely fashion, say within the week after filing the answer, we would have no difficulty in concluding that judgment should be opened and the borough given its day in court. So the issue before us is whether opening the judgment is justified where the borough's attorney delayed until November 2 to file the petition to open. By this time he had been told by plaintiff's attorney that the matter would be placed on the trial list solely on the issue of damages.

For this period the borough's attorney offers his own inexperience in handling litigation, his inadvertence and his chagrin in what had happened. On this point, quoting earlier cases, the court in *Vorhauer*, supra, 403, 949, said that it has long been the custom to grant relief from a judgment entered by default where the failure is due to mistake or oversight of counsel, where application

is promptly made, and a reasonable excuse for the default is offered.

A petition to open a judgment in default is essentially an equitable proceeding and is addressed to the sound discretion of the court, *Richmond v. A.F. of L. Medical Service Plan of Philadelphia,* 415 Pa. 561, 562, 204 A.2d 271, 272 (1974). This case does not fit the usual pattern. For as we indicated, an answer was filed promptly. It is only the petition to open that was delayed. In *Nardulli v. John Carlo, Inc.,* 274 Pa. Super. 34, 39, 417 A.2d 1238, 1241 (1979), the court referred to the doctrine cited in *Kraynick*, supra, that the purpose of a default judgment is to speed the cause and prevent defendant from impeding the establishment of the claim. The court went on to say in *Nardulli* that the judgment taken there defeated the purpose of a default judgment. "There was no evidence," the court said, "that appellant was attempting to procrastinate in order to impede appellee's claim." Whether the answer in this case was filed on September 25 or October 1, the case could have been tried in the November 1984 term.[1] So we find that there is no evidence here that the borough was attempting to procrastinate in order to impede the plaintiff's claim.

Using this approach we do not so much get into the counting of days. The borough cites cases where the emphasis is on the time lapse between the taking of the default judgment and the petition to open. The list includes *Atlas Aluminum Corporation v. Methods Research Products Company,* 420 Pa. 407, 218 A.2d 226 (1966), *Rice v. Reigh,* 62 D&C2d 175 (Berks County, 1973) and *Houser v. Arrow Carrier,* 31 Lehigh L.J. 68 (1964) for holdings that delays of 74 days, 63 days and 2½ months between default judgment and the petition to open as not being too long. On the other hand there are a number of cases where unexplained delays have been shorter than the one in this case and the courts have refused to open the judgment.

In the same vein, in cases where there is no evidence the defendant was attempting to impede plaintiff's claim, the reasons for the delay in filing the petition to open do not seem as

[1] The November 1984 trial term commenced November 12, and the trial list for that term closed October 5.

important. Whatever else the situation might have imported, it was clear by the filing of the answer that the borough intended to resist the claim.

Had the plaintiff's attorney placed the matter on the November 1984 trial list for trial of the damage issue only, we would have one situation. That was not done, however. That issue was about to be placed on the January 1985 trial list. We conclude that the situation here goes against the express statement of the Superior Court that a default judgment is not intended to furnish an advantage to plaintiff in reaching a judgment without a contest. We, therefore, conclude that the judgment should be opened and the borough permitted to enter its defense.

In reaching this conclusion we have studied the often stated principles that in order to open a judgment for default a petition to do so must be filed promptly and the delay must be reasonably explained or excused. *Kraynick,* supra, 109, 146. There are in this case equitable considerations which appeal to the conscience of the court, *Kraynick*, supra, 109, 110, 146 which dictate the result.

ORDER OF COURT

June 20, 1985, the prayer of the petition of the Borough of Waynesboro to open the judgment entered against the petitioner by default by Faerie J. Lane Manon, plaintiff, is granted and the judgment is opened, and the defendant is let into a defense.

[2] The January 1985 trial term commenced January 14, 1985, and the trial list for that term closed December 7, 1985.