IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE FARM FIRE & CASUALTY COMPANY (as subrogee of Jamie Goldstein),	)	
Plaintiff,	)	
v.	)	C.A. No. 08C-12-058 PLA
HARRIS JEWELRY COMPANY, and BRENDA COHEN,	)	
Defendants.	)	

UPON DEFENDANT HARRIS JEWELRY COMPANY'S
MOTION FOR SUMMARY JUDGMENT
DENIED

Submitted: September 14, 2009
Decided: October 1, 2009

This 1st day of October, 2009, it appears to the Court that:

1. In this case, the loss of a ring has led to a great deal of finger-pointing. Jamie Goldstein ("Goldstein") owned a pear-shaped diamond engagement ring that was allegedly worth more than $19,000.00. Plaintiff State Farm Fire & Casualty Company ("State Farm") insured the ring. In November 2006, Goldstein hired defendant Harris Jewelry Company ("Harris Jewelry") to repurpose her ring into a necklace. Harris Jewelry arranged with one of its contract vendors, defendant Brenda Cohen

("Cohen"), to execute the redesign. Harris Jewelry apparently shipped the ring to Cohen in Pennsylvania via United Parcel Service (UPS) in December 2006. Harris Jewelry alleges that Cohen received Goldstein's ring on December 11, 2006. Cohen claims that although UPS delivered several packages to her on that date and throughout December 2006, Goldstein's ring was not in any package she received.

2. State Farm, as Goldstein's subrogee, filed suit in this Court against Harris Jewelry and Cohen, asserting claims for various breaches of contract, negligence, conversion, and unjust enrichment.[1] Harris Jewelry and Cohen have asserted cross-claims against each other for indemnification and contribution.

3. Now before the Court is a Motion for Summary Judgment filed by Harris Jewelry. Harris Jewelry urges that it is entitled to judgment as a matter of law because an internal UPS investigation into the loss at issue in this case concluded that Cohen signed for and received delivery of the ring.[2]

4. Both Cohen and State Farm oppose Harris Jewelry's Motion. By affidavit, Cohen denies that her signatures on the UPS delivery receipts proffered by Harris Jewelry were intended specifically to acknowledge

[1] Docket 1 (Pl.'s Compl.)

[2] Docket 11 (Def. Harris Jewelry's Mot. for Summ. J.).

receipt of Goldstein's ring.[3] Cohen thus argues that her receipt of the ring is the subject of a continuing dispute among the parties. Furthermore, State Farm argues that even if Cohen lost the ring, Harris Jewelry may be liable either as a joint tortfeasor acting "in concert" with Cohen or as a bailee subject to strict liability.[4]

5. When considering a motion for summary judgment, the Court examines the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to judgment as a matter of law.[5] Summary judgment will not be granted if, after viewing the evidence in the light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.[6]

6. The Court agrees with Cohen and State Farm that summary judgment in Harris Jewelry's favor is inappropriate. Simply put, UPS is not a trier of fact in this or any other case. Its internal investigation is far from sufficient to resolve the material disputes between the parties as to if and when Harris Jewelry or Cohen had possession and control of the ring.

[3] Docket 13 (Aff. of Def. Cohen).

[4] Docket 14 (Pl. State Farm's Resp. to Def. Harris Jewelry's Mot. for Summ. J.).

[5] Super Ct. Civ. R. 56(c).

[6] *E.g.*, *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879-80 (Del. Super. 2005).

Moreover, even a conclusive finding that Cohen lost the ring would not foreclose the possibility that Harris Jewelry could be jointly liable.[7] Therefore, Defendant Harris Jewelry's Motion for Summary Judgment is hereby **DENIED.**

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Carol J. Antoff, Esq.
Amanda L.H. Brinton, Esq.
James F. Bailey, Jr., Esq.

[7] Indeed, to expand beyond State Farm's suggestion that Harris Jewelry could be jointly liable for acts taken "in concert" with Cohen, the Court notes that it is well-settled law that "when the negligent acts of two or more persons concur in producing a single indivisible injury, such persons are jointly and severally liable, *though there was no common duty, common design, or concerted action*." *Leishman v. Brady*, 3 A.2d 118, 120 (Del. Super. 1938) (emphasis added); *see also Sears, Roebuck & Co. v. Huang*, 652 A.2d 568, 573 (Del. 1995) ("Multiple defendants may be liable as joint tortfeasors if each defendant's negligence is found to be a proximate cause of a plaintiff's injury.").

The Court cannot, however, accept State Farm's argument that Harris Jewelry should be considered strictly liable as the bailee of Goldstein's ring. The strict liability bailment cases cited in State Farm's Response address bailment-lease arrangements, and particularly those in which bailed property causes physical injury to a bailee-lessee or third party. *See, e.g., Martin v. Ryder Truck Rental, Inc.*, 353 A.2d 581 (Del. 1976). Such cases involve principles of product liability that are inapplicable in a case such as the one at bar, which involves a bailee's nondelivery of the bailed item. *Id.* at 585-88. The parties have not had an opportunity to fully address this issue upon Harris Jewelry's Motion. Nonetheless, the Court would suggest that the issue of Harris Jewelry's potential liability as a bailee is more appropriately viewed in light of past cases considering parking lot owners' liability for cars lost from their facilities. *See Catalfano v. Higgins*, 191 A.2d 330 (Del. Super. 1963); *Kamrath v. Bold*, 1999 WL 1847359 (Del. Com. Pl. June 23, 1999). Rather than proceeding on a theory of strict liability in these nondelivery cases, Delaware courts have held that "proof of delivery of goods to a bailee and failure of the bailee to return them make out a prima facie case [of negligence] and the burden of proof then is cast upon the bailee to proceed with evidence rebutting the inference of negligence." *Catalfano*, 191 A.2d at 332.