

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
05/15/2001

05/04/2001

CLERK OF THE COURT
FORM V000A

THE HONORABLE NORMAN J. DAVIS

T. Melius
Deputy

CV 2000-009832

FILED: _____

MAUREEN SEWRIGHT, et al.

JAY R GRAIF

v.

JEWELS BY G DARRELL OLSON INC

DOUGLAS G WYMORE

MINUTE ENTRY

IN CHAMBERS: This is the time set for Oral Argument on Plaintiff's Motion for Summary Judgment or in the Alternative Motion for Partial Summary Judgment Regarding Liability. Plaintiff, Maureen Sewright, is represented by counsel, Jay R. Graif. Defendant, Jewels By G. Darrell Olson, Inc., is represented by counsel, Douglas G. Wymore.

Court Reporter, Monica Hill, is present.

Discussions are held.

IT IS ORDERED taking this matter under advisement.

Matter concludes.

LATER: The Court having taken this matter under advisement, and having considered Plaintiff's Motion, Response, and Reply thereto, documents submitted therewith, and arguments of counsel, now makes the following findings and orders:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
05/15/2001

05/04/2001

CLERK OF THE COURT
FORM V000A

THE HONORABLE NORMAN J. DAVIS

T. Melius
Deputy

CV 2000-009832

The Plaintiffs seek summary judgment by asserting that the Statute of Frauds set forth in A.R.S. §47-2201(A) precludes Olson's defense for breach of contract and that Olson is negligent per se as a result of violating A.R.S. §44-1602.

Both parties in this action agree that Maureen Sewright ("Sewright") delivered an emerald cut diamond weighing approximately 5.77 carats and additional diamonds cumulatively weighing approximately 5.1 carats all set in a platinum and diamond ring to the Defendant, Jewels by G. Darrell Olson, Inc., ("Olson") in January, 1999. There is also agreement that Sewright delivered the ring to Olson for the purpose of having it inspected and analyzed. Olson inspected the ring and the 5.77-carat diamond was sent to the Gemological Institute of America's Gem trade laboratory for testing and returned to Olson. Thereafter, Olson contacted several other jewelers and received offers for the ring. Olson subsequently sold the ring to a third party.

Sewright disputes that she agreed to sell the ring to Olson or otherwise, but construing the facts most favorably to Olson for purposes of this motion, Olson claims to have contacted Sewright and offered to purchase the ring in exchange for a trade credit to Sewright at his business. Olson asserts that Sewright accepted this offer. Pursuant to A.R.S. §47-2201(A):

"A contract for a sale of goods for the price of \$500.00 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought, or by his authorized agent or broker."

Although the value of the ring has not been conclusively established, it is clear that both parties value the ring well in excess of \$500.00. In this regard, Olson actually sold the ring to Goldstein & Company for \$13,500 after obtaining it from

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
05/15/2001

05/04/2001

CLERK OF THE COURT
FORM V000A

THE HONORABLE NORMAN J. DAVIS

T. Melius
Deputy

CV 2000-009832

Sewright, and Sewright cites a prior appraisal of the ring which valued the ring at \$38,000.

Defendant asserts that the Statute of Frauds is inapplicable to the present situation because Sewright's delivery of the ring to Olson constituted part performance sufficient to remove this case from the Statute of Frauds. Sewright has sued Olson only for money damages such that the equitable doctrine of part performance is not available as a defense to Olson. Trollope v. Korner, 106 Ariz. 10, 17, 470 P.2d 91, 98 (1970); Johnson v. Gilbert, 127 Ariz. 410, 621 P.2d 916 (App. 1980). Further, the Court does not find the presence of any facts sufficient to validate the contract pursuant to A.R.S. §47-2201(C). Accordingly, the Court finds that there is no genuine issue as to any material fact and that the Plaintiffs are entitled to partial summary judgment on their breach of contract claim.

Plaintiffs also seek to hold Olson liable for negligence per se for violation of A.R.S. §44-1602. The statute in question requires Olson, as a jewelry dealer, to keep a list of purchases setting forth various descriptive and other information with respect to jewelry purchases. A.R.S. §44-1602(E) also requires Olson to make payment to the seller or consignor of jewelry by check only, which was clearly not done in this case. While compliance with the requirements of the statute may have afforded the Plaintiffs an opportunity to trace subsequent purchasers of the ring in question, its violation does not particularly provide protection to Plaintiffs for the loss of the ring in the first instance. The Court cannot find that the subject statute meets the legal requirements necessary to impose the doctrine of negligence per se against Olson in this case. Accordingly,

IT IS ORDERED granting Plaintiffs' motion for partial summary judgment on Plaintiffs' breach of contract claim only, and denying said motion in all other respects. The issue of attorney's fees shall abide further proceedings in this case.