

*Summer, 2015*

## CONSTRUCTIVE BAILMENTS

*[Ref. Law of Bailments, Para. 1.07]*

A bailment usually arises out of a contract, express or implied. A constructive bailment, however, arises without an actual agreement between the parties, when one party comes into lawful possession of the property of another party under circumstances in which the interests of justice require that the party in possession of the property hold it for the benefit of its rightful owner. Once a bailment is created, constructive or otherwise, the rights and liabilities of the parties to the bailment – the bailor who owns the property and the bailee who has temporary possession of it – are resolved based on tort law.

Tort law principles require that the bailee exercise care for the bailed property while in the bailee's possession. The degree of care owed by the bailee depends on the type of bailment. There are three types of bailment:

- ◆ Bailment for the Sole Benefit of the Bailor
- ◆ Bailment for the Mutual Benefit of the Bailor and the Bailee
- ◆ Bailment for the Sole Benefit of the Bailee

In a bailment for the sole benefit of the bailor, the bailee owes a slight degree of care. In a bailment for the mutual benefit of the bailor and bailee, the bailee owes an ordinary degree of care. And in a bailment for the sole benefit of the bailee, the bailee owes a high degree of care for the protection of the property.

Once the bailor proves the bailment, there is a presumption that a loss of or damage to the bailed property was due to the fault of the bailee. It is up to the bailee to come forward with proof sufficient to rebut the presumption. If the bailee cannot rebut the presumption, the bailor will prevail.

In *Pfau v. Estabrook*, 2015 N.Y. Misc. LEXIS 1895 (N.Y. Misc. 2015), the plaintiff, Pfau, was in the business of making quilts. She had loaned five quilts to VanDenburgh so that VanDenburgh could display them in her shop. The shop was rented by VanDenburgh from the defendant, Estabrook. In January 2015, VanDenburgh vacated the rental space but left behind 14 quilts, five of which belonged to Pfau. Estabrook and Pfau exchanged emails in which Estabrook acknowledged she had the quilts and that they belonged to Pfau but the parties were not able to reach an agreement

about the return of the property. Pfau then sued to recover the value of her property.

The court held that there was a bailment even though there was never an express or implied agreement between the two parties. The plaintiff, Pfau, who owned the quilts was the bailor and the defendant, Estabrook, who had possession of them was the bailee. The court explained:

Bailment does not always depend on a contractual relation. Instead, a bailment may be actual or constructive. A constructive bailment is one implied by law when one comes into lawful possession of another's personal property, other than by mutual contract of bailment. Thus, a bailment can occur where, as here, a person takes custody of found property.

In the present case, the Plaintiff has proven, by a preponderance of the evidence, a constructive bailment. Here, the Defendant obtained actual possession of the Plaintiff's five quilts, when the Defendant's tenant abandoned the leased premises leaving the Plaintiff's quilts at the Defendant's property. The Defendant acknowledged the bailment of the Plaintiff's five quilts when the Defendant acknowledged, in writing, that she had possession of the five quilts and that the five quilts were the property of the Plaintiff. Moreover, the [Defendant's] emails agreed to return the Plaintiff's quilts to the Plaintiff.

The court concluded that under the circumstances the bailment was for the sole benefit of the bailor, Pfau, that the bailee only owed a duty of slight care for the protection of the bailed property, and that, therefore, the bailee could only be held liable for gross negligence. Since the bailment was proved by the bailor, a presumption arose that the bailee acted with, at a minimum, gross negligence by unreasonably refusing to return the bailed property. It was up to the bailee to rebut the presumption. The court then reviewed the facts of the case:

In the present case, the Plaintiff attempted on two occasions to obtain the return of her quilts. On March 17, 2015, the Plaintiff sent her sister, who is also the Plaintiff's attorney, to obtain the quilts from the Defendant. The Plaintiff emailed a letter to the Defendant stating that her sister was authorized to accept the quilts on the Plaintiff's behalf, but the Defendant refused to deliver the quilts. On March 18, 2015, the Plaintiff personally appeared at the Defendant's business to obtain her quilts, but the Defendant's husband failed and refused to deliver the quilts to the Plaintiff.

As a result, the Plaintiff has proven more than gross negligence in the Defendant's failure to return the Plaintiff's property. Here, the Plaintiff has demonstrated that the Defendant has intentionally withheld the Plaintiff's quilts for the Defendant's own benefit.

The court held that the bailor proved the bailment and the failure by the bailee to return the bailed property as required. As a result, the bailee's negligence was presumed and it was up to the bailee to rebut this presumption. The court held that the evidence showed that the bailee intentionally and unjustifiably withheld the bailor's property and that the bailee did not offer proof sufficient to rebut the presumption of her gross negligence.

On the issue of damages, the court accepted the testimony of the bailor that the retail value of the quilts was \$657 and awarded judgment to the plaintiff/bailor in that amount.