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MIDDLESEX MUTUAL ASSURANCE COMPANY *v.*
BRIAN VASZIL ET AL.
(AC 25437)

Dranginis, Flynn and McLachlan, Js.

Argued January 20—officially released June 7, 2005

(Appeal from Superior Court, judicial district of Middlesex, Jones, J.)

Carl F. Yeich, for the appellant (plaintiff).

Charles E. Hickey, for the appellees (named defendant et al.).

Opinion

McLACHLAN, J. The plaintiff, the Middlesex Mutual Assurance Company, appeals from the summary judgment rendered by the trial court in favor of the defen-

dants Brian Vaszil and Robert Vaszil.[1] The plaintiff brought this action in subrogation of its insured's right to compensation from the defendants. The court found that the defendants' lease created no right of subrogation and, thus, no obligation to the landlord's insurance company for fire loss Brian Vaszil allegedly caused to the landlord's apartment building. On appeal, the plaintiff claims that the court improperly rendered summary judgment because the written lease terms demonstrate the defendants' expectations that the tenant would be liable to the landlord for damage caused to the premises, thereby making subrogation appropriate. We agree and reverse the judgment of the trial court.

This issue on appeal is whether the language of the defendants' lease with the landlord was sufficient to permit the landlord's insurance company to subrogate against the defendants when the lease contained no express provision that the insurance company would have that right. We hold that subrogation exists in favor of the landlord's insurer when the lease contains specific language making the tenant liable for damage he causes to the premises.

In 2001, Brian Vaszil was a student at the University of Connecticut. He occupied one unit of an apartment building at Hunting Heights in Storrs, pursuant to a written lease with the owner, Hunting Lodge Partners, LLC (Hunting). Robert Vaszil, Brian Vaszil's father, cosigned the lease as a guarantor. The plaintiff provided insurance for Hunting. The insurance policy specified that if Hunting had any right to recover damages from another party, those rights were deemed transferred to the plaintiff to the extent that it paid Hunting. It also required Hunting to do everything necessary to secure those rights and to do nothing after the loss to impair them. The lease between Hunting and the defendants required that the tenant not damage the apartment, repair any damage prior to leaving the building and reimburse Hunting for any amount expended to fix damage.[2] The lease did not contain the word subrogation or a specific provision stating that Hunting's insurer had a right of subrogation.

On December 8, 2001, the apartment building was damaged in a fire for which the plaintiff subsequently paid Hunting in excess of $250,000. The plaintiff alleged that Brian Vaszil negligently lit and maintained a candle in his unit while he entertained a female guest. On February 15, 2002, the plaintiff brought this action in subrogation against Brian Vaszil and against Robert Vaszil as guarantor of the lease.[3] The defendants filed a motion for summary judgment, arguing that the plaintiff had no right of subrogation. On October 28, 2003, the court denied the motion. On November 14, 2003, the defendants filed a motion to reargue and, on April 21, 2004, the court rendered summary judgment in favor of the defendants. The court found that the provisions

of the lease obligating the tenant to refrain from causing damage to the apartment and to repair such damage did not create an express agreement obligating the tenant to the landlord's insurer for the fire loss.

Summary judgment is appropriate when "the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Internal quotation marks omitted.) *Miller* v. *United Technologies Corp.*, 233 Conn. 732, 744–45, 660 A.2d 810 (1995); see also Practice Book § 17-49. Thus, because the court's decision on a motion for summary judgment is a legal determination, our review on appeal is plenary. *Faigel* v. *Fairfield University*, 75 Conn. App. 37, 40, 815 A.2d 140 (2003).

I

The plaintiff claims that the lease provisions were sufficient to permit subrogation, and the defendants argue that Connecticut courts require specific, express language conferring on an insurer the right of subrogation against a tenant. Insurance companies seeking subrogation proceed against the responsible party under the theory of equitable subrogation, not conventional subrogation.[4] *Wasko* v. *Manella*, 269 Conn. 527, 533–534, 849 A.2d 777 (2004). "[T]he right of [equitable] subrogation is not a matter of contract; it . . . takes place as a matter of equity, with or without an agreement to that effect." (Internal quotation marks omitted.) *Westchester Fire Ins. Co.* v. *Allstate Ins. Co.*, 236 Conn. 362, 371, 672 A.2d 939 (1996). Equitable subrogation is based on the policies of equity and fairness, and "is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter." (Internal quotation marks omitted.) Id. Furthermore, "[s]ubrogation is a highly favored doctrine . . . which courts should be inclined to extend rather than restrict." (Citations omitted.) Id., 372.

In *DiLullo* v. *Joseph*, 259 Conn. 847, 792 A.2d 819 (2002), our Supreme Court held that the insurer's right of subrogation against a tenant should be left "to the specific agreement of the parties . . . ." Id., 854. In its subrogation analysis, the court recognized that "whether subrogation would or would not apply ordinarily would depend . . . on a case-by-case analysis of the language of the insurance policies and leases involved." Id., 853. *DiLullo* concerned a holdover tenant and, as such, there was no lease to construe, but the court recognized that if there had been a lease, it would need to be analyzed. Id. The rule of *DiLullo* that there is no right of subrogation absent an express agreement is merely a default rule. The court must determine the appropriate interpretation of the lease language.

The leading case that asserts that there is no right of subrogation absent a specific agreement is *Sutton* v. *Jondahl*, 532 P.2d 478, 482 (Okla. App. 1975) (precluding subrogation because law considers tenant coinsured of landlord, and because landlord and tenant have insurable interest in property). Our Supreme Court has criticized *Sutton*, concluding that ''under traditional rules of insurance law, a tenant is not a coinsured on his landlord's fire insurance policy simply because he has an insurable interest in the premises and pays rent.'' *DiLullo* v. *Joseph*, supra, 259 Conn. 853. The court expressly agreed that subrogation generally requires a case-by-case analysis of the insurance policies and leases involved. Id. By disagreeing with the fundamental principles of the *Sutton* rule, the court preserved the right of subrogation in situations in which an analysis of relevant lease language would yield a determination that subrogation is appropriate.

In the present case, the lease provides that the tenant may not damage the apartment. If he does, he must repair any damage by the end of the lease term. Furthermore, if he violates any of the provisions of the lease and fails to repair any damage, he will reimburse the landlord for any amount the landlord spends to make repairs. Considered together, those provisions notify the tenant that he is required to repair any damage he causes and, if he fails to do so, will be liable to the landlord. The lease clearly obligates the tenant to repair or to pay the landlord for any damage he causes. Subrogation allows a party who has paid a debt to ''step into the shoes'' of another to assume his or her legal rights against a third party to prevent unjust enrichment. R. Keeton & A. Widiss, Insurance Law (1988) § 3.10 (a) (1), p. 219. Thus, when the plaintiff effectively stepped into the landlord's shoes by paying for the fire damage, it assumed the landlord's right to receive damage compensation from the defendants. In short, the plaintiff assumed the landlord's right to bring an action against the defendants for that compensation.

The defendants argue that *DiLullo* requires language specifically indicating the right of subrogation. They cite a number of Superior Court cases to support their position.[5] We disagree with those cases. The right of subrogation exists when the language of the lease clearly notifies the tenant of his liability for damage he causes. ''The object of [equitable] subrogation is the prevention of injustice. It is designed to promote and to accomplish justice, and is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, should pay it.'' (Internal quotation marks omitted.) *Westchester Fire Ins. Co.* v. *Allstate Ins. Co.*, supra, 236 Conn. 371. We favor the reasoning in *Westchester Fire Ins. Co.* that there is ''no logical reason to permit a tortfeasor to be unjustly enriched by virtue of having its debt

paid by the insurance company of a party who had the foresight to obtain insurance coverage, and thus to escape all liability for its wrongdoing . . . .'' Id., 372–73. Accordingly, the trial court's determination that the lease created no right of subrogation was improper.

II

Additionally, we note that the defendants raise two policy issues in support of their argument. First, they argue that allowing the right of subrogation in this case will result in significant economic waste in the form of multiple insurance policies. Second, they argue that permitting subrogation without specific language in the lease will spring substantial liability on unsuspecting tenants. We are not persuaded by either argument.

The plaintiff's conclusion that not requiring language specifically indicating subrogation in the lease will result in multiple insurance policies on apartment buildings by landlords and tenants and, thus, cause economic waste is valid in light of *DiLullo*[6] and Connecticut's long history disfavoring such waste.[7] We are not convinced, however, that it carries more weight than the equitable nature of subrogation. Moreover, adopting a rule that requires landlords to include specific subrogation language in their leases would not alleviate the waste concern. Under such a rule, it would be permissible ''for a landlord and tenant to enter into an express agreement or lease provision that would place responsibility for fire damage upon the tenant.'' *Cambridge Mutual Fire Ins. Co.* v. *Crete*, 150 N.H. 673, 676, 846 A.2d 521 (2004). Thus, a landlord need only include subrogation language in the lease, and tenants who choose to comply will be required to procure insurance to cover the apartment, resulting in multiple policies despite the language specifically establishing the right of subrogation. Lease language alone would be insufficient to cure waste.

We reiterate that the goal of equitable subrogation is to avoid injustice by requiring payment from the party that occasioned the harm. *Westchester Fire Ins. Co.* v. *Allstate Ins. Co.*, supra, 236 Conn. 371. In such a case, when financial injustice and some potential for economic waste collide, subrogation jurisprudence places the weight of authority on preventing injustice. Accordingly, we extend the right of subrogation when the lease language supports its use.

We also find unpersuasive the defendants' assertion that permitting subrogation absent an express provision in the lease will put tenants in potential financial jeopardy without clear notice. A conclusion consistent with that reasoning would assume that the average tenant expects to be exempt from liability merely because the landlord had the prudence to obtain insurance. It is sound public policy that we require people to be responsible for their negligence. Moreover, the lease in this case clearly made the tenant liable to the landlord for

any damage the tenant caused, either by repairing the damage himself or by reimbursing the landlord for repairs. Thus, because the tenant was apprised that he would be required to pay for damage he caused, it was appropriate that the landlord's insurer would have a right to receive compensation from the tenant when the insurer covered those costs. Furthermore, permitting subrogation prevents waste because it encourages tenants to exercise due care. We repeat the principle that there is ''no logical reason'' for a tortfeasor to have its debt paid by the insurance company of a party who had the foresight to obtain coverage. *Westchester Fire Ins. Co.* v. *Allstate Ins. Co.*, supra, 236 Conn. 372–73. We defer to the policy of extending subrogation when the lease language makes it reasonable to do so. See id., 371–72.

The judgment is reversed and the case is remanded with direction to deny the defendants' motion for summary judgment and for further proceedings according to law.

In this opinion FLYNN, J., concurred.

[1] A social guest at the apartment was originally also named as a defendant in the subrogation action, but the plaintiff did not name her as a party to this appeal. The effect of our decision is limited to the Vaszils, and we refer to them in this opinion as the defendants.

[2] The lease provides: ''5. CARE OF THE APARTMENT . . . You will not destroy or damage any part of the Apartment . . . .''

''11. REMOVAL OF PROPERTY. When this lease ends, you will leave the Apartment and remove all your property and the property of others and leave the Apartment in good and clean condition and repair any damage caused by yourself or others. . . .''

''13. DEFAULT . . . If you do not do any of the things you promise to do under this lease, you will pay us the amount that we pay to do the things that you did not do. . . .''

[3] We note that although the plaintiff's claim for $250,000 is for the loss caused by the fire, the defendants are liable only for damage to the ''Apartment,'' as referred to in the lease. The record does not indicate the extent, if any, of the damage to the building beyond the apartment leased by Brian Vaszil. We express no opinion as to the correct construction of the term ''Apartment,'' as that issue is not presently before us.

[4] Conventional subrogation is closely associated with assignment and arises only by agreement between two parties that, following a loss, one party, under no obligation to do so, pays the debt of another. *Westchester Fire Ins. Co.* v. *Allstate Ins. Co.*, 236 Conn. 362, 371, 672 A.2d 939 (1996). When the insurer clearly has an interest in the matter and acquires that interest before the loss occurs, conventional subrogation is not appropriate. Id., 372.

[5] See *Hartford Fire Ins. Co.* v. *Warner*, Superior Court, judicial district of Windham at Putnam, Docket No. 68363 (December 18, 2003) (36 Conn. L. Rptr. 215) (precluding subrogation action by landlord's insurer when no specific agreement contained in written lease); *Nationwide Ins. Co.* v. *Comito*, Superior Court, judicial district of New Haven at Meriden, Docket No. 270188 (June 6, 2002) (32 Conn. L. Rptr. 290) (precluding subrogation action when lease language was not express agreement making tenant liable); *Roy* v. *Ferraro*, Superior Court, judicial district of New Britain, Docket No. 502798 (May 23, 2002) (precluding subrogation when lease did not contain express provision permitting such action).

[6] The ''duplication of insurance would, in our view, constitute economic waste and, in a multiunit building, the waste would be compounded by the number of tenants.'' *DiLullo* v. *Joseph*, supra, 259 Conn. 854, citing *Peterson* v. *Silva*, 428 Mass. 751, 754, 704 N.E.2d 1163 (1999) (''[i]t surely is not in the public interest to require all the tenants to insure the building which they share, thus causing the building to be fully insured by each tenancy'').

[7] See, e.g., *Gangemi* v. *Zoning Board of Appeals*, 255 Conn. 143, 154, 763

A.2d 1011 (2001).