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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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DRANGINIS, J., dissenting. Respectfully, I dissent from the majority opinion because it is contrary to the law of equitable subrogation, as it pertains to the rights of landlords and tenants, and results in the type of economic waste that our Supreme Court held is to be avoided as a matter of public policy. See *DiLullo* v. *Joseph*, 259 Conn. 847, 853–54, 792 A.2d 819 (2002). In addition, the majority's decision misapplies the tenets of contract construction; see, e.g., *Rund* v. *Melillo*, 63 Conn. App. 216, 220, 772 A.2d 774 (2001); and the standard applicable to motions for summary judgment. I would affirm the trial court's granting of the motion for summary judgment filed by the defendants Brian Vaszil and Robert Vaszil[1] because the standard form lease the parties used does not contain an express agreement between the landlord, the plaintiff's insured, and the Vaszils regarding the right of subrogation of the plaintiff, the Middlesex Mutual Assurance Company.

I agree with the majority's statement of the facts that underlie this action, including its observation that the lease does not contain the word subrogation or an express provision that the plaintiff has the right to proceed against the tenants for damage caused to the landlord's property. I would add, however, that Brian Vaszil was not the only tenant of unit 19-5 in the apartment building. See footnote 3. An important procedural fact is the trial court's reasoning in rendering summary judgment. Following reargument on the motion for summary judgment, the court concluded ''that the provisions of the lease obligating the tenant not to cause damage to the apartment and to be responsible for repairing any such damages do not rise to a level of creating an *express agreement* noticing and obligating the tenant to be responsible for the fire loss in this case. The court further finds that no other provision of the lease creates such an obligation.'' (Emphasis added.)

The majority sets forth the well-known general rule that applies to motions for summary judgment; Practice Book § 17-49; but omits the tenets that inform the standard that applies to such motions. ''The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, *under applicable principles of substantive law*, entitle him to a judgment as a matter of law . . . and *the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact*.'' (Citation omitted; emphasis added; internal quotation marks omitted.) *Altfeter* v. *Naugatuck*, 53 Conn. App. 791, 800, 732 A.2d 207 (1999). ''The issue must be one which the party opposing the motion is entitled to litigate under [its] pleadings and

the mere existence of a factual dispute apart from the pleadings is not enough to preclude summary judgment.'' (Internal quotation marks omitted.) *New Milford Savings Bank* v. *Roina*, 38 Conn. App. 240, 245, 659 A.2d 1226, cert. denied, 235 Conn. 915, 665 A.2d 609 (1995). ''The test is whether a party would be entitled to a directed verdict on the same facts. . . . The purpose of a complaint . . . is to limit the issues at trial, and it is calculated to prevent surprise. . . . It must provide adequate notice of the facts claimed and the issues to be tried. . . . In order to surmount a motion for summary judgment, a party must demonstrate that there exists a genuine issue of material fact. . . . Demonstrating a genuine issue requires a showing of evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleadings can be warrantably inferred.'' (Citations omitted; internal quotation marks omitted.) Id., 244.

''Although the court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion . . . a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment. . . . A party opposing a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue.'' (Citation omitted; internal quotation marks omitted.) *Altfeter* v. *Naugatuck*, supra, 53 Conn. App. 801. ''Equally well settled is that the trial court does not sit as a trier of fact when ruling on a motion for summary judgment. . . . [T]he trial court's function is not to decide issues of material fact, but rather to determine whether any such issues exist.'' (Internal quotation marks omitted.) *Field* v. *Kearns*, 43 Conn. App. 265, 270, 682 A.2d 148, cert. denied, 239 Conn. 942, 684 A.2d 711 (1996).

I

THE SUBSTANTIVE LAW

In *DiLullo* v. *Joseph*, supra, 259 Conn. 850, our Supreme Court addressed the question of an insurer's right to bring a subrogation action against its insured's tenant who held over under an oral lease. ''The dispositive issue in this appeal is whether, in the *absence of a specific agreement* covering the question, a fire insurer of leased premises has a right of subrogation against a tenant for negligently causing a fire.'' (Emphasis added.) Id., 848. In affirming the trial court's granting of the tenant's motion for summary judgment, the court reasoned, ''in large part, upon the principle that subrogation, as an equitable doctrine, invokes matters of policy and fairness. . . . One such policy implicated by the issue presently before us is that disfavoring economic waste. See *Gangemi* v. *Zoning Board of Appeals*, 255 Conn. 143, 154, 763 A.2d 1011 (2001) (policy against

economic waste long recognized in our jurisdiction). This strong public policy convinces us that it would be inappropriate to create a default rule that allocates to the tenant the responsibility of maintaining sufficient insurance to cover a claim for subrogation by his landlord's insurer. Such a rule would create a strong incentive for *every* tenant to carry liability insurance in an amount necessary to compensate for the value, or perhaps even the replacement cost, of the entire building, irrespective of the portion of the building occupied by the tenant. This is precisely the same value or replacement cost insured by the landlord under his fire insurance policy. Thus, although the two forms of insurance would be different, the economic interest insured would be the same. This 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*. See *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'). We think that our law would be better served by having the default rule of law embody this policy against economic waste, and by leaving it to the *specific agreement* of the parties if they wish a different rule to apply to their, or their insurers', relationship.'' (Citation omitted; emphasis added.) *DiLullo* v. *Joseph*, supra, 853–54.

In its amended complaint, the plaintiff alleged the following relevant facts. The plaintiff issued an insurance policy for a *multiunit apartment building* owned by the landlord. The *apartment building* was destroyed by a fire that began in the bedroom of apartment unit 19-5 that was leased to Brian Vaszil *and others*. At the time, Brian Vaszil was a student at the University of Connecticut at Storrs and maintained a permanent residence with his parents elsewhere. The fire allegedly started as a result of his negligence when he lit a candle. As a result of his alleged negligence, the insured suffered property damage in excess of $250,000. The plaintiff has paid the loss pursuant to the terms of the policy. The landlord has subrogated and assigned all of its rights to the plaintiff.[2] The complaint also alleges that the provisions of the lease applicable to the tenants of *unit 19-5* required the tenants to care for the *unit* and its appliances, and not destroy or damage the *unit*. The amended complaint does not allege that the lease contains an express or specific agreement regarding its right of subrogation.

The construction of the effect of pleadings is a question of law over which this court exercises plenary review. See *Miller* v. *Eagan*, 265 Conn. 301, 308, 828 A.2d 549 (2003). As noted in part III, to withstand a motion for summary judgment, the issue raised by the facts alleged in the complaint must be one a party may litigate under applicable principles of substantive law.

Altfeter v. *Naugatuck*, supra, 53 Conn. App. 800; *New Milford Savings Bank* v. *Roina*, supra, 38 Conn. App. 245. Although the plaintiff alleged and presented evidence of its right to subrogate under the insurance policy, it does not allege an express agreement between the landlord and the Vaszils to that effect. Under substantive law, the agreement at issue is the one between the landlord and the Vaszils, not the agreement between the plaintiff and its insured. No matter what construction is given the amended complaint, the plaintiff cannot prevail as a matter of law in the absence of an *express agreement* between the landlord and the Vaszils.

Furthermore, construing the allegations of the complaint in the plaintiff's favor, one can conclude only that they imply that *every* person who signed the landlord's lease for a unit in the apartment building would have to insure the entire building to protect himself or herself from catastrophic loss in the event of a fire, which is also the substance of the plaintiff's argument on appeal. If, as the majority has done, this implication is given effect, every tenant would be required to procure insurance to protect the entire apartment building, which is contrary to the public policy against economic waste that results when multiple parties insure the same economic interest. ''[I]n most instances, neither landlords nor tenants ordinarily expect that the landlord's insurer would be proceeding against the tenant, unless expert counseling to that effect had forewarned them.'' *DiLullo* v. *Joseph*, supra, 259 Conn. 854.

II

CONTRACT CONSTRUCTION

Whether the trial court properly granted the Vaszils' motion for summary judgment is controlled by whether the lease contains an express or specific agreement regarding the plaintiff's right of subrogation. ''[I]n the absence of an express agreement between the parties covering the question, there is no right of subrogation on the part of a landlord's fire insurer against a tenant of the landlord's premises.'' Id., 850–51. ''[S]uch an agreement generally may be evidenced by the parties' lease . . . .'' Id., 851 n.4. The lease between the Vaszils and the landlord was before the trial court.[3]

''A lease is a contract.'' (Internal quotation marks omitted.) *Central New Haven Development Corp.* v. *La Crepe, Inc.*, 177 Conn. 212, 214, 413 A.2d 840 (1979). A lease is subject to the same rules of construction as other contracts. *Scoville* v. *Shop-Rite Supermarkets, Inc.*, 86 Conn. App. 426, 432, 863 A.2d 211 (2004), cert. denied, 272 Conn. 921, 867 A.2d 838 (2005). ''Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a question of fact . . . [w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . .

When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. . . . On the other hand, [w]hen an ambiguous term is at issue, the trial court can examine the extrinsic evidence to resolve the question of the parties' intent. . . . Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion. . . . A court will not torture words to import ambiguity when the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings.'' (Citations omitted; internal quotation marks omitted.) *Rund* v. *Melillo*, supra, 63 Conn. App. 220. ''When there is ambiguity, we must construe contractual terms against the drafter.'' (Internal quotation marks omitted.) Id., 222.

DiLullo requires an *express agreement* between a landlord and tenant for the landlord's insurer to bring a successful action against a negligent tenant. Black's Law Dictionary defines the word ''express'' as ''[c]lear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous. . . . Declared and distinctly stated. Made known distinctly and explicitly, and not left to inference. . . . Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with 'implied.' '' Black's Law Dictionary (6th Ed. 1990).

Very simply, as the majority acknowledges, the lease does not contain the word subrogation or any express language that the plaintiff had the right to proceed against the Vaszils for damage negligently caused to the landlord's property. That acknowledgement alone is sufficient to affirm the judgment of the trial court. The majority, however, has scrutinized the contract to infer an agreement between the landlord and the Vaszils regarding subrogation. *DiLullo* does not permit the inference of such an agreement. At best, the lease is ambiguous as to a tenant's responsibility for damage negligently caused. The lease uses the words apartment, building, damage and destruction. It enumerates certain rules, including one that the tenant is not to do anything that would increase the cost of insurance. See footnote 3 (''12. RULES AND REGULATIONS.''). In case of a tenant's default, the landlord reserved the right to keep the security deposit to pay for rent or other money owed under the lease. See footnote 3 (''16. SECURITY DEPOSIT.''). One equally could infer from the provisions of the lease that a tenant's liability is limited to the amount of his or her security deposit. Such a reasonable inference is far from an express agreement between the landlord and tenant that the insurer has a right to subrogation for losses paid to its insured.

III

RULES PERTAINING TO SUMMARY JUDGMENT

When ruling on a motion for summary judgment, a court determines whether there are genuine issues of material fact and does not sit as the trier of fact to decide the genuine issues of material fact. In deciding the appeal, the majority reframed one of the issues raised by the plaintiff,[4] thereby creating a question of fact, i.e., ''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.'' On appeal, the plaintiff framed its first issue, concerning the construction of the contract, in the language of the trial court that ruled on the motion for summary judgment. The trial court's language is faithful to the language of the rule in *DiLullo*, i.e., ''express agreement.'' Furthermore, footnote 3 of the majority opinion highlights the ambiguity within the lease. The unresolved factual question noted in footnote 3 concerns the extent to which the lease permits the landlord to pursue a tenant for damage to property, that is, whether the landlord's right is limited to damage to the apartment or extends to the destruction of the building housing numerous apartments. Damage and destruction are not defined by the lease. The default provision of the lease indicates that the landlord will look to the $1500 security deposit if the tenant violates provisions of the lease. See footnote 3 (''16. SECURITY DEPOSIT.''). Given the question concerning the extent of a tenant's responsibility for damage or destruction, the lease not only fails to let a tenant know that the insurance carrier has the right to subrogate for any loss benefits paid, but it also does not put a tenant on notice that he or she should obtain insurance in the event of a catastrophic loss. This is particularly true where the lease implies that the landlord has protected itself by having procured its own insurance. See footnote 3 (''12. RULES AND REGULATIONS.'').

I recognize that if this court were to conclude that a motion for summary judgment involved a genuine issue of material fact decided by the trial court, the remedy would be to reverse the judgment and to remand the matter for further proceedings. Practically speaking, the outcome would be no different from what the majority has ordered; but the legal effect of the majority's decision is inconsistent with *DiLullo* v. *Joseph*, supra, 259 Conn. 850, which requires an express or specific agreement between the landlord and the tenant regarding an insurer's right of equitable subrogation. Not only did the majority take on the job of construing an ambiguous contract on a motion for summary judgment, it misapplied the substantive law of equitable subrogation regarding a tenancy.

For the foregoing reasons, I dissent, respectfully.

[1] See footnote 1 of the majority opinion.

[2] The applicable policy of insurance provides in relevant part: ''K. Transfer Of Rights Of Recovery Against Others To Us

"1. Applicable to Businessowners Property Coverage:

"If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. . . ."

[3] By construing the lease in accordance with the rules of construction discussed in part II, I conclude that there is no express agreement between the insured and the Vaszils regarding the plaintiff's right of subrogation and that the following provisions of the lease create, at best, an ambiguity in that regard:

"The words 'you', 'your', and 'yours' mean the Tenant: Joseph Pellerito, Brian Vaszil, John Gengras and Dylan Mark.

"We agree to lease to you, and you agree to lease from us, Apartment Number 19-5 . . . .

"5. CARE OF APARTMENT. You will keep the Apartment, surrounding areas and all fixtures and appliances in a clean and safe condition and remove all ashes, garbage, rubbish and other waste in a clean and safe manner to the place provided by us. You will use all electrical, plumbing, heating, air conditioning and other facilities and appliances in a reasonable manner. You will not destroy or damage any part of the Apartment or any of our furnishings or appliances in the Apartment, nor remove any of our furnishings or appliances from the Apartment. . . .

"8. DAMAGE TO APARTMENT. You will not have to pay rent for any time that your use and enjoyment of the Apartment is substantially affected because the Apartment or the building is damaged by fire or other casualty. However, you will pay rent if you caused the damage or destruction or if you continue to occupy any portion of the Apartment. . . .

"9. CONDEMNATION. If any part of the building is condemned, we shall have the right to cancel this lease. If we decide to cancel the lease, we will give you notice within thirty . . . days after the date of the condemnation. The lease will end on the date that we give you in our notice. . . .

"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.

"12. RULES AND REGULATIONS. You agree to comply with the following rules and regulations: a) You will not block any sidewalks, halls, or stairways and you will not use them except to go to and from the Apartment. b) You will not place radio or TV aerials, wires or other electrical wires or connections anywhere without our approval. c) You will not fasten anything to the walls, floors, doors, windows, appliances or fixtures in the Apartment. d) You will not drill any holes in the Apartment or use any nails, hooks or screws on any walls, floors, doors, windows, appliances or fixtures in the Apartment. e) You will not place any sign or advertisement on the outside or inside of the building. f) You will not throw, drop, hang or shake anything from any windows, balconies, halls or stairways. g) *You will not bring into the Apartment anything which increases costs for fire or liability insurance.* h) You will not use any electrical appliances that are dangerous or that do not use ordinary electrical plugs. i) You will not install any locks on the doors leading to the Apartment, and you will not change any existing locks. j) You will not keep any animals or pets in the Apartment.

"13. DEFAULT. You will be in default under this lease if: a) You do not make a payment of rent within ten . . . days after it is due; or b) You violate or do not do any of the things you agree to do under this lease . . . . If you are in default under this lease, we may send you a notice and cancel this lease which will end on the date in the notice. 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 do not do. You will pay us the total rent stated in Section 2 of this lease less the amount of rent already paid. You will also pay us interest on any amount you owe us which is past due at the rate of twelve percent . . . per year. If you are in default under this lease and if we refer the matter to an attorney to evict you, you will pay us a reasonable attorney's fee. If we refer this matter to an attorney because you do not pay the amount you owe us when it is due, you will pay us an attorney's fee not in excess of fifteen percent . . . of the amount of the judgment we obtain against you. You will also pay us all of our other collection costs and expenses. . . .

"16. SECURITY DEPOSIT. You will deposit with us $1,500.00 before May 1, 2001 as security deposit. *If you are in default under this lease, we may*

use the security deposit to pay the rent or other money you owe us under this lease. . . ." (Emphasis added.)

[4] The plaintiff's brief listed two issues in its statement of issues: "1. Did the trial court err in holding that the plaintiff, which paid its insured, the owner of an apartment building, for damages caused to the building by the negligent . . . conduct of a tenant, was not entitled to pursue subrogation against the tenant because the *written lease terms did not create an express agreement* between the apartment owner and the tenant that the tenant would be financially responsible for damage he caused?

"2. Did the trial court err in its application of the public policy against economic waste and in holding that the plaintiff, which paid its insured, the owner of an apartment building, for damages caused to the building by the negligent . . . conduct of a tenant, was not entitled to pursue subrogation against the tenant who was insured against liability for damage he caused under his parents' homeowners insurance policy?" (Emphasis added.)