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BERDON, J., dissenting. I respectfully disagree with the conclusions of the majority and, accordingly, would affirm the judgment of the trial court. The following is a summary of the facts underlying this appeal. The plaintiff, Hartford Fire Insurance Company, issued a fire insurance policy on a home owned by Dana A. Taylor in the Wauregan section of Plainfield. Under the terms of the policy, the plaintiff had subrogation rights from its insured, Taylor. The house was leased to the defendant Linda Warner.[1] The lease between Taylor and the defendant was silent with respect to any subrogation rights in favor of the plaintiff insurer. The lease, however, did provide: ''Tenant must pay for damages suffered and money spent by Landlord relating to any claim arising from any act or neglect of Tenant. Tenant is responsible for all acts of Tenant's family, employees, guests and invitees.''

A fire was accidentally started by Scott Warner, the defendant's nephew, which caused damage to the premises in the amount of $43,951. This amount together with $3150 for loss of rental was paid to Taylor, the insured, by the plaintiff under the terms of the insurance policy. The plaintiff brought an action against Scott Warner on the ground of negligence and against the defendant, the tenant, on the ground of vicarious liability, seeking reimbursement from her for the sums paid to the insured as a result of the fire under the theory that the plaintiff was subrogated to the rights of Taylor, the landlord.

''The law has recognized two types of subrogation: conventional; and legal or equitable. . . . Conventional subrogation can take effect only by agreement and has been said to be synonymous with assignment. It occurs where one having no interest or any relation to the matter pays the debt of another, and by agreement is entitled to the rights and securities of the creditor so paid. . . . By contrast, [t]he right of [equitable] subrogation is not a matter of contract; it does not arise from any contractual relationship between the parties, but takes place as a matter of equity, with or without an agreement to that effect. . . . The object of [legal or 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. . . . As now applied, the doctrine of [legal or] equitable subrogation 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.'' (Citations omitted;

internal quotation marks omitted.) *Westchester Fire Ins. Co.* v. *Allstate Ins. Co.*, 236 Conn. 362, 370–71, 672 A.2d 939 (1996). With no agreement between the parties in this case, the plaintiff's subrogation rights, if any, would have to arise under the theory of legal or equitable subrogation.

As the majority recognizes, *DiLullo* v. *Joseph*, 259 Conn. 847, 792 A.2d 819 (2002), and *Wasko* v. *Manella*, 269 Conn. 527, 849 A.2d 777 (2004), two cases relative to subrogation, must be considered in deciding this case. Both *DiLullo* and *Wasko* at first blush, seem contradictory, but under appropriate analysis, they are distinguishable.

In *DiLullo*, our Supreme Court held that in the absence of a specific agreement, subrogation was not allowed. *DiLullo* v. *Joseph*, supra, 259 Conn. 853–55. As the court explained, two rationales supported its conclusion: (1) the strong public policy against economic waste, which would not be served by requiring multiple insurance policies on the same piece of property, and (2) the likelihood that a tenant does not expect to subrogate his landlord's insurer. Id., 851.

In *Wasko*, a social guest, who was allowed to use the home of an insured for a weekend, lit a fire in the fireplace, and the next day, "emptied the ashes and embers into a paper bag, which he placed outside on the porch. After he departed, the house caught fire and was substantially destroyed. The fire marshal of the town of Goshen determined that the ashes and embers in the bag had caused the blaze." *Wasko* v. *Manella*, supra, 269 Conn. 529. The *Wasko* court held that under those circumstances, an insurer could proceed against the guest under the subrogation clause in the insured's policy, even though there was no agreement between the landlord and the social guest permitting such subrogation. Id., 549–50.[2]

This case fits the mold of *DiLullo*, not that of *Wasko*. As in *DiLullo*, the defendant was a tenant. Indeed, as our Supreme Court pointed out in *Wasko*, "[c]ontrary to the protestations of the defendant's counsel at oral argument before this court, we are convinced that social houseguests do not proceed with the same lack of expectations regarding personal responsibility for negligent conduct as do tenants. Put another way, we believe that most social guests fully expect to be held liable for their negligent conduct in another's home—whether that conduct constitutes breaking the television, causing physical injury, or burning the house down. Unlike tenants, social guests have not signed a contract with the host, they have not paid the host any set amount of money for rent, and, accordingly, they do not have the same expectations regarding insurance coverage for the property as do tenants. In sum, the equitable concerns that led this court to preclude subrogation in the context of landlord and tenant simply are not

present in the context of houseguest and host.'' Id., 547. Unless we are willing to distinguish a residential tenant from a commercial tenant, which I am unwilling to do, we must, under *DiLullo*, affirm the trial court's judgment.

Accordingly, I respectfully dissent.

[1] Throughout this dissent, the term defendant refers only to Linda Warner. Scott Warner, her nephew, was a defendant in the underlying subrogation action, but the court rendered a default judgment against him for failure to appear. He did not participate in this appeal.

[2] Although *DiLullo* and *Wasko* are distinguishable, I feel compelled to note that I believe *Wasko* was wrongly decided, and I fully agree with the majority in *Wasko* v. *Manella*, 74 Conn. App. 32, 811 A.2d 727 (2002), rev'd, 269 Conn. 527, 849 A.2d 777 (2004). The reasoning of the majority in *Wasko* v. *Manella*, supra, 74 Conn. App. 32, is persuasive. Unless there is an agreement between the property occupant (whether it be a social guest or tenant) and the insured of that property, the insurer should not be allowed to proceed against third parties under a theory of subrogation. Furthermore, an insurer is ''[t]he party to a contract of insurance who assumes the risk and undertakes to indemnify the second party known as the insured or to pay a certain sum on the happening of a specific contingency.'' Ballentine's Law Dictionary (3d Ed. 1969). The insurer is fully compensated by the property owner for the risk it assumes. It appears that *Wasko* v. *Manella*, supra, 269 Conn. 527, was influenced by the dissenting judge in *Wasko* v. *Manella*, supra, 74 Conn. App. 44 (*Peters, J.*, dissenting), who recognized that she was ''not on the side of the angels in [the] case'' with which I agree.