Connecticut Supreme Court Holds That Landlord's Insurer Can Pursue Equitable Subrogation If Lease Requires Tenant Have Insurance and Holds Tenant Responsible for Damage

Gus Sara
The Subrogation Strategist
5.8.18

In *Amica Mutual Insurance Company v. Muldowney,* 328 Conn. 428 (2018), the Connecticut Supreme Court considered whether a landlord's insurance carrier could subrogate against the landlord's tenants for property damage when the lease did not specifically authorize subrogation. The court held that, while subrogation was not expressly allowed, the language in the lease requiring the tenants to have liability insurance and holding them liable for damage was sufficient to overcome Connecticut's common law presumption that a landlord's carrier cannot subrogate against a tenant. This case emphasizes the importance of analyzing every aspect of a lease when determining the true intent of the parties with respect to subrogation.

In *Muldowney*, Amica Mutual Insurance Company (Amica Mutual) provided property insurance to John Mihalec for his single-family rental home in Greenwich, Connecticut. Mr. Mihalec leased the home to the defendants, Andrew Muldowney and Kalynn Tupa. The lease agreement required the tenants to maintain oil in the dwelling's oil-fueled heating system. In the lease, the defendants also agreed to pay for heating fuel and "to not willfully or negligently destroy, deface, damage, impair or remove any part of the dwelling." The lease also required the defendants to maintain the heat at a minimum of 60 degrees when they were on vacation. Furthermore, the lease required the defendants to pay the landlord for "all lost rent and other damages" if the defendants breached the terms of the lease. In addition, the lease required the defendants to secure personal liability insurance for the benefit of the defendants and the landlord. While the tenants were on a two-week winter vacation, the heating system ran out of oil, causing pipes in the home to freeze and break and resulting in water damage to the home. As a result of the damage, Amica Mutual paid Mr. Mihalec over $60,000.

Amica Mutual filed a subrogation action against the defendants. The defendants moved to dismiss the action, arguing that Amica Mutual had no right of subrogation because the lease did not expressly allow it. The defendants relied on *DiLullo v. Joseph*, 259 Conn. 847 (2002), which created a presumption that a landlord's carrier cannot subrogate against the landlord's tenants absent a specific agreement otherwise. The trial court denied the motion, finding that the provisions in the subject lease that held the tenants liable for damage and required them to have liability insurance for the property were sufficient to overcome the common law presumption against subrogation. The trial court then issued a judgment against the defendants in favor of Amica Mutual. The defendants appealed the case to the Appellate Court, which affirmed the trial court's holdings regarding the plaintiff's right to subrogation. The defendants then filed a petition for certification to the Connecticut Supreme Court, which the court accepted on the limited issue of whether the lower courts properly concluded that the plaintiff had a right of subrogation against the tenants.

The Supreme Court acknowledged that, while it generally considers subrogation a highly favored doctrine that should be extended rather than restricted, its decision in *DiLullo* imposed limitations on subrogation with respect to actions brought by a landlord's insurer against the landlord's tenants. However, the court noted that the default presumption against subrogation set forth in *DiLullo* only applies when the lease agreement does not sufficiently specify which party should bear the risk of damage from the tenant's negligence and who should insure against that risk. The lease agreement in *DiLullo* was completely silent on these issues. Conversely, the lease agreement in this case specifically stated that the tenants were liable for damage caused by their negligence and were required to have liability insurance to cover such damage. The court found these provisions to be sufficient to overcome the presumption against subrogation and affirmed the lower courts' rulings. In addition, the court clarified that a specific reference to

subrogation is not necessary to overcome the presumption against subrogation as long as the lease agreement "put the tenant on notice that he would be responsible for any damage he caused and he should obtain insurance coverage for this purpose."

The *Muldowney* court provided much-needed clarification on the *DiLullo* decision and narrowed the reach of the presumption against the right of a landlord's insurer to subrogate against a tenant. Prior to the *Muldowney* ruling, Connecticut courts generally interpreted the *DiLullo* decision to impose a presumption against subrogation unless there was a provision in the lease expressly authorizing subrogation. The *Muldowney* court clarified that the presumption against subrogation will not apply if the lease sufficiently allocates the parties' risks and coverages regarding property damage. In light of the *Muldowney* decision, when reviewing a lease in Connecticut to determine subrogation potential, it is important to consider not just whether there is a provision on subrogation, but also whether the lease holds the tenant liable for damage and whether the tenant is required to have insurance for said damage.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.