SUPREME COURT OF NEBRASKA

Beveridge v. Savage

285 Neb. 991 (2013) · No. No. S-12-1007 · Decided May 24, 2013

SUMMARY

The Nebraska Supreme Court reviewed whether a residential lease expressly allowed a landlord’s insurer to pursue a subrogation claim against tenants for fire damage allegedly caused by negligence. The court held that the lease’s requirements for liability and renter’s insurance did not expressly require insurance on the realty or provide a subrogation right, so the tenants remained presumed coinsureds under the landlord’s fire policy. The court affirmed summary judgment for the tenants.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Heavican, C.J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	May 24, 2013
DOCKET	No. S-12-1007
DISPOSITION	affirmed
PROCEDURAL POSTURE	The landlord appealed from the Cass County District Court's grant of summary judgment for the tenants and dismissal of the landlord's insurer's subrogation action for fire damage.
STANDARD OF REVIEW	The appellate court independently reviews questions of law, including contract interpretation, and affirms summary judgment when the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Reid Beveridge v. John Savage, Jill Savage

TOPICS

subrogation · insurance · landlord tenant · contract interpretation · summary judgment

PRACTICE AREAS

insurance · subrogation · landlord-tenant · contracts · summary judgment

QUESTIONS PRESENTED

1. Whether the lease expressly rebutted the presumption that the tenant was a coinsured under the landlord's fire insurance policy.
2. Whether the lease's requirements that the tenant obtain liability and renter's insurance were sufficient to permit the landlord's insurer to bring a negligence-based subrogation action against the tenant for fire damage.
3. Whether summary judgment for the tenants was proper.

HOLDINGS

1. Absent an agreement to the contrary, a tenant is presumed to be a coinsured under the landlord's fire insurance policy, and the landlord's insurer cannot maintain a subrogation action against the tenant for negligently caused damage to the insured property.
2. The lease's requirement that the tenant obtain liability and renter's insurance did not expressly require fire insurance on the realty, transfer the risk of fire loss to the tenant, or grant the landlord or insurer a right of subrogation; therefore, it was insufficient to overcome the coinsured presumption.
3. Summary judgment for the Savages was proper because there was no genuine issue of material fact and, as coinsureds, the Savages were entitled to judgment as a matter of law against the landlord's subrogation claim.

KEY QUOTATIONS

> *"absent an agreement to the contrary, the law presumes that a tenant is coinsured under a landlord's fire insurance policy and that therefore, a landlord's insurer cannot maintain a subrogation action against a tenant for damage to the insured property that is caused by the tenant's negligence."* (994-995)

> *"To rebut the presumption, the lease must expressly require the tenant to obtain fire insurance on the realty."* (996)

> *"Because the Savages were coinsureds, Beveridge and his insurer cannot bring a subrogation action against them."* (997)

FACTUAL BACKGROUND

Reid Beveridge owned a house in Plattsmouth, Nebraska, and leased it to John Savage. The lease required the tenant to repair damage caused by negligence and obtain a "$100,000" liability and renter's insurance policy, but it did not expressly require fire insurance on the building or grant the landlord or insurer a right of subrogation. A child living with the Savages accidentally started a fire with a lighter, and Beveridge's insurer paid $161,545.01 for reconstruction and $7,824.18 for lost rent before pursuing subrogation against the Savages.

PROCEDURAL HISTORY

Both parties moved for summary judgment after the landlord's insurer paid for fire damage and lost rent and brought a subrogation action in the landlord's name. The district court granted the tenants' motion, concluding that the tenants were coinsureds under the landlord's fire insurance policy and that neither the landlord nor the insurer could maintain subrogation. The court overruled the landlord's motion to alter or amend the judgment, and the Nebraska Supreme Court affirmed after moving the case to its docket.

DISPOSITION

affirmed

CASES CITED

- Swift v. Norwest Bank-Omaha West, ante p. 619, ___ N.W.2d ___ (2013)
- Blakely v. Lancaster County, 284 Neb. 659, 825 N.W.2d 149 (2012)
- Tri-Par Investments v. Sousa, 268 Neb. 119, 680 N.W.2d 190 (2004)
- Sutton v. Jondahl, 532 P.2d 478 (Okla. App. 1975)
- Buckeye State Mut. Ins. Co. v. Humlicek, 284 Neb. 463, 822 N.W.2d 351 (2012)
- Bedore v. Ranch Oil Co., 282 Neb. 553, 805 N.W.2d 68 (2011)
- Brockley v. Lozier Corp., 241 Neb. 449, 488 N.W.2d 556 (1992)
