SUPREME COURT OF NEBRASKA

SFI Ltd. Partnership 8 v. Carroll

288 Neb. 698 (2014) · No. No. S-13-192 · Decided August 1, 2014

SUMMARY

The Nebraska Supreme Court held that the antisubrogation rule did not bar a landlord's direct claim against a tenant for uninsured fire losses allegedly caused by the tenant's negligence. The court concluded that the lease provision requiring the tenant to maintain renter's insurance was neither void as against public policy nor unconscionable, reversed summary judgment for the tenant, and remanded for further proceedings because the tenant's negligence had not been determined.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	August 1, 2014
DOCKET	No. S-13-192
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	SFI appealed after the district court granted Carroll's motion for summary judgment, denied SFI's motion for partial summary judgment, and dismissed SFI's complaint. The Nebraska Supreme Court granted SFI's petition to bypass the Nebraska Court of Appeals.
STANDARD OF REVIEW	Summary judgment is reviewed by determining whether the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and whether the moving party is entitled to judgment as a matter of law. Interpretation of a lease, unconscionability, and public-policy validity are questions of law reviewed de novo. Waiver of an affirmative defense involving Neb. Ct. R. Pldg. § 6-1108(c) is also reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	SFI Ltd. Partnership 8 v. Michelle Carroll

TOPICS

subrogation | landlord tenant | contracts | summary judgment | unconscionability

PRACTICE AREAS

insurance | landlord-tenant law | contracts | civil procedure

QUESTIONS PRESENTED

1. Whether Carroll's answer fairly raised the defenses that paragraph 17 of the lease was unconscionable and void against public policy.
2. Whether the antisubrogation rule adopted in Tri-Par Investments barred SFI's direct claim against Carroll for uninsured fire losses.
3. Whether paragraph 17 of the lease was unconscionable or void against public policy.
4. Whether the Supreme Court could review the denial of SFI's motion for partial summary judgment and direct judgment concerning paragraphs 10q, 15, and 16 of the lease.

HOLDINGS

1. Carroll's answer fairly placed SFI on notice that lease provisions imposing liability for fire damage were being challenged, so paragraph 17 was properly considered despite not being specifically identified by number.
2. The antisubrogation rule adopted in Tri-Par Investments does not bar a landlord's direct claim against a tenant for fire damage not covered by the landlord's insurance policy.
3. Paragraph 17 was neither unconscionable nor void against public policy because it required renter's insurance with personal-liability coverage but did not require Carroll to insure the entire apartment complex, and it was not manifestly unfair or clearly repugnant to public conscience.
4. SFI was not entitled to partial summary judgment because unresolved factual questions concerning whether Carroll negligently caused the fire and what liability the lease provisions would impose remained.

KEY QUOTATIONS

> *"And because this is not a subrogation action, the antisubrogation rule adopted in Tri-Par Investments does not apply."* (709)

> *"At least where a tenant negligently causes the fire damage, we cannot extend the Sutton rule to uninsured losses where a statute expressly declares the tenant to be responsible."* (712)

FACTUAL BACKGROUND

SFI owned an apartment complex and leased an apartment to Michelle Carroll under a standardized residential lease. The lease required Carroll to pay for repairs caused by her use of the unit and to maintain renter's insurance with at least $100,000 in personal-liability coverage. A fire damaged Carroll's apartment and the surrounding building; SFI had insurance but stipulated that it sustained more than $100,000 in uninsured damage, and SFI alleged that Carroll negligently caused the fire by failing to dispose properly of cigarettes.

PROCEDURAL HISTORY

SFI sued its tenant, Michelle Carroll, for breach of lease and negligence arising from a fire in Carroll's apartment. The district court granted Carroll summary judgment, ruling that a lease provision requiring renter's insurance was void against public policy and unconscionable and that the action was barred by the antisubrogation rule recognized in Tri-Par Investments. The Nebraska Supreme Court reversed and remanded, concluding that the claim concerned uninsured losses rather than subrogation and that unresolved factual questions concerning Carroll's negligence precluded further summary-judgment relief.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Sarpy County District Court for further proceedings consistent with the opinion, including resolution of whether Carroll negligently caused the fire and consideration of the challenged lease provisions in light of the remaining factual issues.

CASES CITED

- Coffey v. Planet Group, 287 Neb. 834, 845 N.W.2d 255 (2014)
- Buckeye State Mut. Ins. Co. v. Humlicek, 284 Neb. 463, 822 N.W.2d 351 (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)
- Rickerl v. Farmers Ins. Exch., 277 Neb. 446, 763 N.W.2d 86 (2009)
- Weeder v. Central Comm. College, 269 Neb. 114, 691 N.W.2d 508 (2005)
- Harbeson v. Parke Davis, Inc., 746 F.2d 517 (9th Cir. 1984)
- Beveridge v. Savage, 285 Neb. 991, 830 N.W.2d 482 (2013)
- Myers v. Nebraska Invest. Council, 272 Neb. 669, 724 N.W.2d 776 (2006)
- Lexington Ins. Co. v. Entrex Comm. Servs., 275 Neb. 702, 749 N.W.2d 124 (2008)
- Bedrosky v. Hiner, 230 Neb. 200, 430 N.W.2d 535 (1988)
- Jeffrey B. v. Amy L., 283 Neb. 940, 814 N.W.2d 737 (2012)
- Cambridge Mut. Fire Ins. Co. v. Crete, 150 N.H. 673, 846 A.2d 521 (2004)
- U.S. Bank Nat. Assn. v. Peterson, 284 Neb. 820, 823 N.W.2d 460 (2012)
- Kuhn v. Wells Fargo Bank of Neb., 278 Neb. 428, 771 N.W.2d 103 (2009)