SUPREME COURT OF NEW HAMPSHIRE

Daniel Ro v. Factory Mutual Insurance Company, as Subrogee of Trustees of Dartmouth College; Sebastian Lim v. Factory Mutual Insurance Company, as Subrogee of Trustees of Dartmouth College

Ro v. Factory Mutual Insurance Co. · No. Merrimack No. 2019-0620 · Decided March 10, 2021

SUMMARY

The Supreme Court of New Hampshire considered whether college students living in Dartmouth dormitories are implied coinsureds under the college's fire insurance policy. Applying the anti-subrogation doctrine adopted in Cambridge Mutual Fire Insurance Co. v. Crete, the court held that the students' contractual relationship with Dartmouth, including payment of room and board and the right to occupy dormitory rooms, created a reasonable expectation that the insurance would benefit them. The court affirmed summary judgment for Daniel Ro and Sebastian Lim and concluded that the doctrine also applied to Ro, who lived in a different dormitory from the one where the fire originated.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	HICKS, J.; HANTZ MARCONI, J.; DONOVAN, J.
JURISDICTION	New Hampshire
DECIDED	March 10, 2021
DOCKET	Merrimack No. 2019-0620
DISPOSITION	affirmed
PROCEDURAL POSTURE	Factory Mutual appealed an order denying its motion for summary judgment and granting the plaintiffs' cross-motion for summary judgment in a declaratory judgment action concerning whether the plaintiffs were implied coinsureds under Dartmouth College's fire insurance policy.
STANDARD OF REVIEW	On cross-motions for summary judgment, the court considers the evidence in the light most favorable to each party as the nonmoving party and determines whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. The court reviews the trial court's application of law to the facts de novo.

PRECEDENTIAL VALUE	published and precedential
PARTIES	Factory Mutual Insurance Company v. Daniel Ro, Sebastian Lim

TOPICS

insurance coverage · subrogation · declaratory judgment · contracts · summary judgment

PRACTICE AREAS

insurance · subrogation · contracts · real estate

QUESTIONS PRESENTED

1. Whether the anti-subrogation doctrine adopted in Cambridge Mutual Fire Insurance Co. v. Crete applies to college students residing in campus dormitories.
2. Whether the plaintiffs had a sufficiently tenant-like contractual or possessory relationship with Dartmouth College for purposes of treating them as implied coinsureds under the college's fire insurance policy.
3. Whether the Crete anti-subrogation doctrine applied to Daniel Ro even though the fire occurred in a different dormitory from the one in which he lived.
4. Whether Dartmouth's student-handbook policies expressly displaced the anti-subrogation doctrine by making the plaintiffs responsible for fire damage.
5. Whether equitable considerations permitted Factory Mutual to recover from the plaintiffs for the negligently caused fire.

HOLDINGS

1. The anti-subrogation doctrine adopted in Cambridge Mutual Fire Insurance Co. v. Crete applies to the contractual relationship between Dartmouth College and its residential students, even if the students lacked a traditional possessory interest in land and the relationship was not technically one of landlord and tenant.
2. The Crete doctrine applies to Ro even though he lived in a different dormitory from Morton Hall, where the fire originated.
3. An agreement negates the Crete anti-subrogation doctrine only if it explicitly addresses insurance by informing the tenant or student of the obligation to insure the building against fire or of potential liability to the landlord's or college's insurer in a subrogation action. A provision merely imposing responsibility or liability for damage caused by negligence is insufficient.
4. Equity did not permit Factory Mutual to pursue subrogation against the plaintiffs for the negligently caused fire because Factory Mutual accepted premiums for the very risk of negligently caused fire in a college dormitory.

KEY QUOTATIONS

> *"We agree with the plaintiffs that an agreement to negate the anti-subrogation doctrine we adopted in Crete must explicitly address the issue of insurance."* (12)

> *"A provision imposing responsibility for fire loss, by itself, is not sufficient to negate Crete's anti-subrogation doctrine."* (13)

> *"We similarly conclude that the balance of equities here does not favor subrogation."* (15)

FACTUAL BACKGROUND

In 2016, Dartmouth students Daniel Ro and Sebastian Lim lived in separate campus dormitories and paid room and board in addition to tuition. They set up a charcoal grill on a platform outside a fourth-floor window in Lim's dormitory; the grill started a fire that spread to the roof, and firefighting efforts caused extensive water damage. Factory Mutual, Dartmouth's property insurer, paid the Trustees $4,544,313.55 and then sought subrogation against the students.

PROCEDURAL HISTORY

Factory Mutual paid the Trustees of Dartmouth College for fire damage and brought a subrogation claim against Ro and Lim. The plaintiffs sought a declaration that they were implied coinsureds under the college's fire insurance policy, while Factory Mutual asserted negligence and breach-of-contract counterclaims. The Superior Court denied Factory Mutual's motion for summary judgment, granted summary judgment to the plaintiffs, and stayed the counterclaims pending resolution of the declaratory judgment action. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Cambridge Mutual Fire Insurance Co. v. Crete, 150 N.H. 673 (2004)
- Sutton v. Jondahl, 532 P.2d 478 (Okla. Ct. App. 1975)
- Sabato v. Federal National Mortgage Association, 172 N.H. 128 (2019)
- Walker v. President and Fellows of Harvard College, 840 F.3d 57 (1st Cir. 2016)
- Gamble v. University of New Hampshire, 136 N.H. 9 (1992)
- Young v. Harrison, 284 F.3d 863 (8th Cir. 2002)
- LSP Associates v. Town of Gilford, 142 N.H. 369 (1997)
- Kline v. Burns, 111 N.H. 87 (1971)
- Koleci v. Sposito, No. X07HHDCV166085724S, 2018 WL 2047880 (Conn. Super. Ct. Apr. 10, 2018)
- Buckeye State Mutual Insurance Co. v. Humlicek, 822 N.W.2d 351 (Neb. 2012)
- Roces v. Reno Housing Authority, 300 F. Supp. 3d 1172 (D. Nev. 2018)
- Endicott College v. Mahoney, No. 00-589C, 2001 WL 1173303 (Mass. Super. Ct. Oct. 3, 2001)
- DiLullo v. Joseph, 792 A.2d 819 (Conn. 2002)

- Beveridge v. Savage, 830 N.W.2d 482 (Neb. 2013)
- Middlesex Mutual Assurance Co. v. Vaszil, 900 A.2d 513 (Conn. 2006)
- Dattel Family Ltd. Partnership v. Wintz, 250 S.W.3d 883 (Tenn. Ct. App. 2007)
- Cascade Trailer Court v. Beeson, 749 P.2d 761 (Wash. Ct. App. 1988)
- Lexington Insurance Co. v. Raboin, 712 A.2d 1011 (Del. Super. Ct.), aff'd, 723 A.2d 397 (Del. 1998)
- Peterson v. Silva, 704 N.E.2d 1163 (Mass. 1999)
- Security Fence Co. v. Association, 101 N.H. 190 (1957)
- Wolters v. American Republic Insurance Co., 149 N.H. 599 (2003)
- Phoenix Insurance Co. v. Stamell, 796 N.Y.S.2d 772 (N.Y. App. Div. 2005)

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