Cincinnati Insurance v. Duplessis

In this subrogation action Plaintiff filed a lawsuit for damages on behalf of its insured-landlord against their tenant who it alleged started a fire that caused over $100,000.00 in damage to the house the tenant was renting. We represented the tenant, who had an oral, $1,500.00 per month lease with the landlord. The landlord alleged that our client was negligent because she left burning candles unattended.

Prior to the start of discovery, we filed a Motion to Dismiss the suit arguing that absent a contractual provision to the contrary, where a landlord insures the property, a tenant is not liable for a negligently caused fire. The trial court agreed and dismissed the case in its entirety. In so doing, the court applied the rule of law that we raised based on the case of *Dix Mutual Insurance Company v. LaFramboise*, 149 Ill. 2d 314 (1992). The Plaintiff insurance company appealed.

The Second District Appellate Court affirmed the trial court's decision. On appeal, the plaintiff argued that *Dix* did not apply to this case because the lease in *Dix* was written and the lease in this case was oral. The appellate court agreed with our argument that just because the lease was not reduced to writing, did not take it outside the type discussed in *Dix*. In addition, the appellate noted that Plaintiffs' argument did not address the *Dix* court's second rationale that where the landlord purchases insurance, the tenant becomes a coinsured with the landlord and, therefore, the insurer may not sue the tenant for subrogation. It added that whether the lease is oral or written has no effect on the tenant's status as a coinsured and the insurer's ability to seek subrogation from her. Plaintiff also contended that the coinsured rationale should not apply because our client maintained renter's insurance. The court noted that the purpose of renter's insurance is different from that of casualty insurance or liability insurance. The appellate court also noted that it appeared that the tenant in *Dix* also had renter's insurance. The supreme court in *Dix* found that the only significance of this fact was that each party to the lease agreed to be responsible for his own property.

For the full text of this opinion, please contact Mark Ruda or Dan Woods of Condon & Cook, LLC or please see *Cincinnati Insurance Co. v. Duplessis*, 364 Ill. App. 3d 984; 848 N.E.2d 220 (2nd Dist. 2006), *app. den.* 221 Ill.2d 633, 857 N.E.2d 670 (2006).