

State Specific: Connecticut



Connecticut Supreme Court Prohibits Subrogation Against Insured's Live-In Fiance

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In *Allstate Insurance Company v. Palumbo*, et al, 296 Conn. 253 (2010), the Connecticut Supreme Court faced the issue of whether an insurance carrier could pursue a subrogation action against its insured's fiancé, who resided with the insured at the insured property.

On January 31, 2002, the home of the plaintiff's insured was damaged by

fire. It was determined that the cause of the fire was a water heater that was improperly installed by the insured's fiancé, the defendant. The plaintiff paid its insured for damages and expenses and then filed a subrogation action against the fiancé. At the time of the fire, the defendant and the insured had been living together for almost 2 ½ years. They shared equally

the expenses of the home, including all bills, repairs and upgrades. They also shared the cost of the homeowner's insurance policy. The defendant personally made improvements to the home and property.

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“tenant”, unless there was a specific agreement between the landlord and tenant providing for such subrogation. *Wasko v. Manella*, 269 Conn. 527 (2004); *DiLullo v. Joseph*, 259 Conn. 847 (2002).

The *Palumbo* Court found that neither category was applicable.

“[W]e note that these facts demonstrate that the relationship between [the insured] and the defendant reasonably cannot be deemed to be that of host-social houseguest. We also note that, although their arrangement did not evidence all of the formal legal elements of a landlord-tenant relationship, they did have an oral agreement under which the defendant made monthly payments to [the insured] as long as he lived there. The defendant’s improvements to the property, however, clearly exceeded a tenant’s legal obligations. Thus, it is clear that the defendant is neither a social houseguest nor a tenant in the strict legal sense.” *Id.* at 264-265.

The Court held that it was not necessary to “assign the relationship to whichever category is the closest fit to determine whether subrogation is proper”. *Id.* at 265. Rather, the Court looked to equitable considerations and held that “the totality of the circumstances in the present case

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convinces us that the equities clearly weigh against subrogation”. *Id.* at 275. Specifically, the Court held that (1) it would be an economic waste to find that the defendant was not covered under the plaintiff’s policy as it would force the defendant to buy his own policy for the same property; (2) the facts showed that it was the expectation of the plaintiff’s insured and the defendant that he would be covered under the policy; and (3) because

the insured and the defendant were mutually economically dependent, an action against the defendant would deplete his resources, ultimately affecting the insured financially.

This case demonstrates that it is insufficient for an insurer merely to show that a tortfeasor falls into a specific category. Rather, a balancing of the equities must also indicate subrogation to be proper.