

Definitions Matter in Illinois: Tenant Held Liable Only for Damage to Apartment Unit

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In *Phila. Indem. Ins. Co. v. Gonzalez*, No. 1-23-0833, 2024 Ill. App. Unpub. LEXIS 1372, the Appellate Court of Illinois considered whether the terms of a lease agreement limited a tenant's liability for fire damages, a fire caused by her negligence, to her apartment unit only. The plaintiff insured the subject apartment building, which incurred damage to several units as result of a fire in the tenant's unit. The lease defined "Premises" as the specific apartment unit occupied by the tenant and held the tenant responsible for damage caused to the Premises. While the court found that the lease permitted the plaintiff to subrogate against the tenant, it held that the lease terms limited the damages to the tenant's apartment unit only.

In *Gonzalez*, the plaintiff's insured owned a multi-unit apartment building in Chicago. In September 2019, the building owner entered into a lease agreement with the defendant for apartment Unit 601. The lease stated that Unit 601 was the "Leased Address (Premises)." Another provision stated that building owner "hereby leases to Tenant(s) and Tenant(s) hereby leases from Landlord(s) for use as a private dwelling only, the Premises, together with the fixtures and appliances (if any) in the premises..." The lease also stated that "Tenant shall be liable for any damage done to the premises as a result of Tenant's or Tenant's invitees, guests or others authorized to reside in the Premises [sic] direct action, negligence, or failure to inform Landlord of repairs necessary to prevent damage to the Premises."

On August 7, 2020, a fire occurred in the kitchen of Unit 601, resulting in sprinkler activations which caused damage to Unit 601 and other units, totaling over \$200,000. The plaintiff paid its insured for the damages and filed a subrogation action against the tenant. The tenant filed a motion to dismiss on the ground that she was an implied co-insured under the policy. The circuit court denied the motion in part, holding that the parties did not intend to include tenant as a co-insured on the policy. However, the court granted the motion in part, holding that, per the lease, liability was limited to those damages caused to Unit 601 only. The court found that the term "Premises" was defined in the lease as Unit 601. The court held that the plaintiff could not seek compensation for damage beyond Unit 601. The ruling limited the damages that the plaintiff could recover to just below \$19,000. The plaintiff appealed this decision.

In its *de novo* review, the appellate court noted that the contract must be interpreted to give effect to the parties' intent based on the document as a whole. The court found that the lease held the tenant liable for damages to the premises caused by negligence, and that the term "Premises" was defined as Unit 601. The lease did not contain an express provision holding the tenant liable for damages beyond Unit 601. The court rejected the plaintiff's argument that because the term "premises" was not capitalized it was meant to be distinguished from the "Premises" defined at the beginning of the lease. The court found that the sentence defining "Premises" used an uncapitalized version of the term as well, establishing that they are interchangeable. The court's holding also relied on the fact that the lease used other terms to describe areas beyond Unit 601, such as "property," "common areas," and "elsewhere in the building." The court held that the damages limitation applied to both the negligence and contract counts. Since the building owner had no right to recover against the tenant for damages beyond Unit 601, neither did its subrogating insurance carrier.

The *Gonzalez* case establishes that in Illinois, the definitions and express intent set forth in the lease agreement are critical to determining whether a landlord's carrier can subrogate against a tenant, and the extent of damages that can be sought. It is important for the subrogation advocate to consider the definitions of the terms used in relevant lease provisions and how that may impact the subrogation claim.

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