BUSINESS LAW UPDATE: JOINED, EVEN IF IT MAKES NO ECONOMIC OR PRACTICAL SENSE?

Agreements, such as a multi-tenant lease or promissory note, often have more than one obligor (also known as a “promisor”), and often include a provision that all obligors can be held jointly and severally liable in a breach of contract action.

Since the late ‘50s and until recently, each of those parties could be sued as *individual defendants* versus lumping them all into a single action. This meant that any individual is fully liable for all damages resulting from a breach, regardless of proportion of fault. That allowed obligees (also known as “promisees”) a great deal of flexibility in how and against whom to pursue their claims.

That is, until *DKN Holdings LLC v. Faerber,* a recent California Court of Appeal case. In DKN, a landlord leased commercial space to three individual tenants, who were jointly and severally liable. The tenants breached the lease; the landlord sued one tenant and secured a judgment against him. The landlord then brought suit against the two other tenants in a separate action. The Court ruled that **obligees now are forced to join joint and several defendants in one action, even if it makes no economic or practical sense to do so**. Although this holding is questionable and seems to directly conflict with long-standing law, and no review has been granted by the California Supreme Court, DKN is a published opinion and therefore is binding in California.

We recommend you contact Hoge Fenton's **Business Law attorneys**before entering into a contract with more than one party. Our experienced and knowledgeable attorneys are here to evaluate your contracts and craft creative solutions to address DKN’s cautionary decision.

The Fine Print.

penalties or promoting, marketing or recommending to another party any transaction or matter addressed herein.

Primary Contact

- Steven D. Siner