

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.

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