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CAN YOU FILE SEPARATE LAWSUITS INVOLVING THE SAME CLAIM? THE ANSWER IS SOMETIMES YES - AND YOU SHOULD

The California Supreme Court recently issued a decision which, given other significant news events, may have been overlooked. Its importance is still note-worthy.

By unanimous decision, the Court ruled that parties who are ***"jointly and severally"*** liable on an obligation may be sued in separate lawsuits. However, the judgment obtained in the first action will provide the outside limits of what the creditor would be entitled to recover in any subsequent lawsuit. Further, the defendants in any subsequent lawsuit may raise all defenses available to them, including those rejected in the first action, because they were not a party to the earlier action.

Where does this issue arise? In written contracts, mainly. For example, suppose that a company leases a commercial space, intending to use it for a fitness center. The lease is signed by three individuals on behalf of the company, each agreeing, per the terms of the lease, to be personally responsible for fulfilling the lease obligations. Further assume that the company breaches the lease and the Landlord sues the company, but not the individuals, obtaining a final judgment against the company for breach of the lease. Does this judgment preclude the Landlord from later filing a lawsuit against the individuals or any of them, claiming the same breach of the same lease? The Supreme Court said: "NO", given that all individuals were described in the lease as being jointly and severally responsible for payment of the lease obligations. Only satisfaction of the judgment would preclude the subsequent lawsuit.

FACTS:

A ten-year written lease was entered into between DKN Holdings, LLC ("Landlord"), and Evolution Fitness ("Tenant"), for lease of commercial space in a shopping center to operate a fitness club. The lease stated that the individuals signing the Lease, even though doing so on behalf of the Tenant, "shall have joint and several responsibility" to comply with the lease terms. The lease was signed on behalf of the Tenant by Roy Caputo, Wade Faerber, and Matthew Neel. In effect, whether they realized it or not, these individuals were guaranteeing compliance with the terms of the lease.

Shortly thereafter, Caputo sued the Landlord, claiming failure to disclose material facts concerning the construction on the driveway into the shopping center which would not begin for a year; and further that State regulations prohibited cutting back vegetation that made the gym less visible. Caputo sought damages and rescission of the lease. The Landlord cross-complained alleging breach of the lease, claiming rent and other monies due. Although the Cross-Complaint named Evolution Fitness, Wade Faerber and Matthew Neel in addition to Caputo, the Cross-Complaint was only served on Caputo. In fact, Faerber and Neel were subsequently dismissed as cross-defendants from that action. At trial, the Court rejected all of Caputo's claims and awarded over $2.8 million in damages to the Landlord on the Cross-Complaint.

Subsequently, the Landlord sued Faerber individually for breach of the same lease. Faerber challenged the legality of that Complaint (by filing a demurrer), claiming that because the Landlord's rights under the lease had been adjudicated in the Caputo action, any lawsuit against Faerber was barred by the rule against splitting a cause of action. The Landlord replied that California law permitted separate actions to be filed against parties who were jointly and severally liable. The trial court and the court of appeal disagreed with the Landlord and sustained the demurrer without leave to amend, effectively dismissing the case. The Supreme Court reversed these decisions.

DECISION:

While the Court of Appeal believed that allowing the Landlord to bring a subsequent action would permit it to obtain separate judgments in separate actions based on the same claims, this principle was rejected by the Supreme Court. In essence, the Supreme Court concluded that the Landlord had separate claims against each of the obligors, and therefore was entitled to pursue the claims in separate actions. The defendant in the subsequent action (Faerber), was not the "same party" who defended the first lawsuit (Caputo); and therefore could not avoid the claims being made by the Landlord.

Lastly, the Court concluded that the liability of the defendant in the subsequent action (Faerber), is not derived from or reliant upon the liability imposed upon Caputo in the first lawsuit. The Court cited the following examples which should define the distinction. This is not the case where the plaintiff was precluded from suing an insurance agent after he settled with the insurance company for the same loss. Further, this is not the case where the nature of derivative liability so closely aligns the separate defendants' interest that they are to be treated as identical parties. An example of this doctrine would be found between a corporation and its employees, a general contractor and subcontractors, an association of securities dealers and member agents, and among alleged co-conspirators. None of these derivative liability cases involve joint and several liability.

HOW THIS AFFECTS YOU:

The answer would depend upon whether you are the creditor or the debtor. In either case, there exists the predicate question of whether all parties are "jointly and severally" liable for the obligation. If that is not the case, then this conversation is unnecessary.

Where the discussion is relevant, consider the following. As a creditor, in the majority of cases, you would probably sue all parties in one lawsuit to reduce litigation costs and to accelerate resolution of the dispute. In the present matter, clearly there were other unknown and unexpressed considerations that came into play which resulted in the Landlord deciding to defer the filing of an action against the other signatories to the lease. That decision was vindicated by the Supreme Court. If faced with a similar situation, an analysis should be conducted precedent to the commencement of the first lawsuit as to whether it is in your best interest to file one lawsuit against all parties; or to pursue your claim in separate lawsuits.

If you are the debtor, it certainly behooves you to read any agreement carefully which you are being asked to sign. During the negotiation stage of the transaction, delete, if possible, any reference to joint and several liability of the obligation or otherwise attempt to restrict its application. Be careful. The existence of such "joint and several" liability wording in a contract may easily be overlooked by all who read the text except for an experienced business attorney who is attuned to such issues. Accordingly, it is always in your best interest to work with such an attorney who can best guide you through the negotiation and drafting of the Agreement. Given the Supreme Court decision, you do not want to be on the receiving end of that lawsuit.

CASE REFERENCE: DKN Holdings, LLC v. Wade Faerber, 61 Cal. 4th 813 (2015).

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