

Menu Practice Areas Directions Contact

call 408-261-4252 email RHRC



No Double-Dipping: One Injury Means One Lawsuit

By Jill E. Fox

May 7, 2014

When two physicians, including an orthopedic surgeon, decide to open an upscale gym called "Evolution Elite Sports and Fitness," problems can invariably occur. Because we get involved in a substantial number of leasehold litigation, both commercial and residential, the recent decision in *DKN Holdings v. Faerber* (2014 WL 1648172) is of some interest.

In this case, the two doctors and a third person started their fitness venture with a lease for space in a southern California shopping center named Margarita Square. The 10-year lease included a provision that multiple lessees "shall have joint and several responsibility" for complying with the lease terms. Dr. Caputo, Dr. Faerber, and Mr. Neel all signed as lessees.

Joint liability usually gives parties more pockets to search in the event of non-payment. But here, the joint liability provision worked as a shield and stopped the landlord from trying to empty their lessees' pockets twice.

The first time, landlord DKN Holdings successfully defended a lawsuit by Dr. Caputo a few years into the lease. Dr. Caputo sued, claiming DKN had ruined his gym business by withholding important information: that DKN didn't disclose, for example, the view of the gym would be blocked by native vegetation in a streambed near the center, which could not be trimmed by law, or that a median was going to be installed on the main frontage road, reducing access to the center.

DKN cross-complained against Caputo and the other two signatories for breach of the lease. But before the case was decided, DKN dropped its claims against Caputo's two co-owners. The court gave Caputo

nothing, and gave DKN more than \$2.8 million.

But then DKN got cute. It did not ask the court to add Faerber and Neel to the judgment. Instead, it initiated a second lawsuit against Faerber and Neel for the same money DKN was awarded in the first lawsuit.

The court said no way. DKN could not recover twice by suing each lessee separately for the same injury. Because the three lessees had "joint and several responsibility" for the lease, their landlord's injury was one and the same. The court dismissed DKN's second lawsuit, holding that it was precluded by the first.

DKN Holdings tested the general rule of "res judicata" that one may only recover once for the same injury, and that a final determination bars later lawsuits, by seeking to recover against different *parties*. A person may only recover once for an injury to particular primary rights, for example, the right to rent payments under a lease. But the "primary rights" at issue in a lawsuit are based on the *injury* giving rise to that suit -- not the legal theories of recovery or relief. For example, a landlord who is owed rent may seek payment based on various theories (e.g., breach of contract, unfair business practices, fraud, etc.) or seek various types of relief (e.g., monetary damages, specific performance of a lease, declaratory relief) -- so long as he or she seeks these in the same lawsuit.

As the ancient philosopher Heraclitus observed, "you can't step into the same river twice." **DKN Holdings** clarified that when multiple parties are responsible for an injury, the "one lawsuit per injury" principle still applies. When DKN Holdings got its \$2.8 million judgment, the proper course was to try and collect it from all responsible parties -- not to go after another \$2.8 million.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

Office Locations

Rossi, Hamerslough, Reischl and Chuck
1960 The Alameda
Suite 200
San Jose, CA 95126

Phone: 408-261-4252

[Map & Directions](#)

Rossi, Hamerslough, Reischl and Chuck
8 Harris Court
Suite A1
Monterey, CA 93940

Phone: 831-655-3180

[Map & Directions](#)

The California law firm of Rossi, Hamerslough, Reischl & Chuck provides legal representation to real estate and business clients throughout Silicon Valley and the San Francisco Bay Area including San Francisco, San Jose, Palo Alto, Los Altos, Los Gatos, Menlo Park, Gilroy, Hollister, Santa Cruz, Santa Clara, Aptos, Monterey, Carmel, Salinas, Morgan Hill, Saratoga, San Francisco County, Santa Clara County, Santa Cruz County, San Benito County, Alameda County, San Mateo County, Monterey County, and Contra Costa County.

© 2015 by [Rossi, Hamerslough, Reischl & Chuck](#). All rights reserved. [Disclaimer](#) | [Site Map](#)
[Privacy Policy](#) | [Business Development Solutions](#) by [FindLaw](#), a Thomson Reuters business.