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Co-Tenancy Provisions In Retail Leases: Liquidated Damages Or Alternative Performance?

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Two cases from different appellate districts in California have come to differ-ent conclusions about the enforceability of co-tenancy provisions. The Fifth District Court of Appeal in *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.*, 232 Cal. App. 4th 1332, 182 Cal. Rptr. 3d 235 (5th Dist. 2015) (*Grand Prospect*) found the co-tenancy provision in that case to be akin to a liquidated damages provision, and analyzed it under case law applicable to such provisions, ultimately finding the provision to be an unenforceable penalty. More recently, the Third District Court of Appeal in *JJD-HOVElk Grove, LLC v. Jo-Ann Stores, LLC*, 80 Cal. App. 5th 409, 295 Cal. Rptr. 3d 725 (3d Dist. 2022) (*"JJD"*) found a co-tenancy provision to be merely an agreed upon method of alterna-tive performance of the contract, and to therefore be enforceable. This article describes co-tenancy provisions, discusses liquidated damages and alternative performance, and then reviews *Grand Prospect* and *JJD* in detail to compare the reasoning in each case.

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