

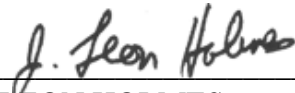
and Hira holds the remaining 70% interest. Document #40-3 at 15. The members' interest in the company was based on the percentage of their respective capital contributions to the company. *Id.* ¶11. After the company was formed and initial contributions were made, discussions arose regarding paying Hira back some of his contribution in exchange for 20% of the interest that Hira held. These discussions resulted in a promissory note setting forth the conditions and terms of repayment to Hira. Hira says that this agreement was made with Grewal and Bhamra and not Jasbir. Document #41 at ¶7. The plaintiffs point out that Jasbir is included in the promissory note, and Hira and Jasbir, as well as Grewal and Bhamra, each signed the note. Document #35-1.

The plaintiffs argue that Hira has breached the agreement by not transferring 20% of his interest to them. The promissory note, though, does not include any provision on the transfer of 20% of Hira's ownership interest. Hira acknowledges that he agreed to transfer 20% to be split between Grewal and Bhamra, but there is no document evidencing whether Jasbir was also to receive some of Hira's stake. Hira has produced record evidence that the plaintiffs have failed to make timely payments and so have breached the terms of the promissory note. This breach, Hira argues, means that he is released from any obligation he had under the terms of the agreement. The plaintiffs counter that Hira anticipatorily breached his obligation to perform under the contract. Whether there has been a breach and which party committed it ordinarily is a question of fact. *See NCCF Support, Inc. v. Harris McHaney Real Estate Co.*, 2010 Ark. App. 384, 8, 376 S.W.3d 459, 464 (2010).

These issues are intertwined with issues as to which no motion for summary judgement has been filed. Consequently, the resolution of these issues should be postponed until the record is fully developed at trial, as it will be whether or not the court grants summary judgment.

The plaintiffs' motion for partial summary judgment is, therefore, DENIED. Document #33.

IT IS SO ORDERED this 12th day of March, 2018.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE