

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH ROSE *et al.*,

Plaintiffs,

Case No. 15-cv-10436

Hon. Matthew F. Leitman

v.

ROASTING PLANT, INC. *et al.*,

Defendants.

**ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT (ECF #9) AND GRANTING DEFENDANTS' MOTION TO
AMEND ANSWER AND AFFIRMATIVE DEFENSES (ECF # 12)**

In this action, Plaintiffs allege, among other things, that Defendant Roasting Plant, Inc. ("Roasting Plant") breached its payment obligations under a promissory note. Plaintiffs have moved for summary judgment on the breach-of-note claim. The motion is premature and will be **DENIED**.

There has been no discovery. The Court has not yet even held a Scheduling Conference nor issued a Scheduling Order. Roasting Plant's response to the motion outlines a number of potentially meritorious defenses to the breach-of-note claim. (Roasting Plant moves to add those defenses in an Amended Answer, and as set forth below, that motion is granted.) Roasting Plant has also filed an affidavit pursuant to Rule 56(d) of the Federal Rules of Civil Procedure outlining discovery it has not been able to conduct and that it will conduct, and Roasting

Plant has shown how that discovery may be relevant to and may support its defenses to the breach of note claim. Plaintiffs' reply has not persuaded the Court that it may hold at this point that Roasting Plant's proposed defenses must fail as a matter of law. Accordingly, **IT IS HEREBY ORDERED THAT** Plaintiffs' motion for summary judgment (ECF #9) is **DENIED**. Pursuant to Local Rule 7.1(b)(2), Plaintiffs may not file another motion for summary judgment in this action without prior leave of the Court.

Defendants have moved for leave to file an Amended Answer and Affirmative Defenses. (*See* ECF #12.) That motion is **GRANTED**. The filing of the amended pleading at this very early stage in the proceedings will not unfairly prejudice Plaintiffs. And while Plaintiffs complain that the proposed affirmative defenses are deficient because Defendants do not plead sufficient facts, the facts and factual allegations (or at least a fair bit of them) supporting the defenses are set forth in some detail in Defendants' Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment. (*See* ECF #11.) Plaintiffs have sufficient notice of the defenses to be able to respond to them. Defendants shall file their Amended Answer and Affirmative Defenses within seven days.

The parties shall appear for a Scheduling Conference at a date and time to be set by the Court.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: May 1, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 1, 2015, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(313) 234-5113