

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 25 2014
CLERK, U.S. DISTRICT COURT
By _____
Deputy

PATRICIA BULLARD, ET AL., §
Plaintiffs, §
VS. §
ALEC DAY, ET AL., §
Defendants. §

NO. 4:14-CV-604-A

MEMORANDUM OPINION
and
ORDER

Came on for consideration in the above-captioned action the motion for partial summary judgment filed by plaintiffs, Patricia Bullard, and Wubbers, LLC. Defendants, Alec Day, Home Jewelry Business, LLC, and ARB 1521, LLC., filed response to plaintiffs' motion. Having now considered all of the parties' filings, the entire summary judgment record, and the applicable legal authorities, the court concludes that the motion for summary judgment should be denied.

Plaintiffs seek summary judgment as to a portion of count one of their claim for breach of contract, insofar as they allege defendants have failed to pay the remaining \$20,000 of the purchase price under the Asset Purchase Agreement ("APA"). While it is uncontested that defendants have paid all but \$20,000 of the purchase price under the APA, defendants argue that they were

excused from performance, because plaintiffs breached the agreement first.

Plaintiffs have not established that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law as to the breach of agreement claim to which this motion is directed. Thus they have failed to carry their Rule 56 burden. For this reason, plaintiffs' motion for partial summary judgment should be denied.

Therefore,

The court ORDERS that plaintiffs' motion for partial summary judgment be, and is hereby, denied.

SIGNED November 25, 2014.



JOHN MCBRYDE
United States District Judge