

[Breach of Fee Sharing Agreement Excuses Party from Contractual Obligations](#)

Posted on February 9, 2011 by [David J. McMahon](#)

In *Brown v. Grimes*, 2011 DJDAR 1645 (2011), the [Second District California Court of Appeal](#) decided an interesting case concerning enforcement of the terms of a fee sharing agreement.

The trial court refused to enforce the agreement for three reasons:

1. failure to perform material obligations of the contract;
2. unclean hands due to an unethical arrangement to split fees with a non-lawyer; and,
3. because the agreement lacked the required consent of the client to split fees.

Paul Ross (“Ross”) was a former California attorney. He resigned from the practice of law as a result of State Bar proceedings which were pending against him. He did investigative work for a California attorney named James Brown (“Brown”). Ross referred cases to Brown arising from a refinery explosion in Texas.

Brown was unable to prosecute the cases as lead counsel. For this reason, Ross and Brown contacted another California attorney, Milton Grimes (“Grimes”), who agreed to act as the lead attorney.

Brown and Grimes agreed to split the fees on a 50/50 basis. Both Ross and Brown then agreed to bring in yet another law firm to work on the cases, with a further split of any amounts recovered.

After the cases began to resolve, Grimes sent Brown his 40 percent share of fees. When Ross did not receive payment, he asserted a claim against both Brown and Grimes. Later, Grimes learned that Brown had agreed to pay Ross 90 percent of the fees Brown received.

Grimes offered to hold Brown’s remaining share of fees in trust until the dispute was resolved. Brown refused and sued Grimes for declaratory relief seeking a declaration as to Brown’s responsibilities to Ross.

Grimes pursued a cross-complaint against Brown for rescission and for money previously paid. The lower court concluded that the agreement was not enforceable because Brown failed to perform his obligation to Grimes to pay Ross.

The Court of Appeal affirmed in part, stating that if a party’s failure to perform a contractual obligation constitutes a material breach, the other party may be discharged from his contractual obligations. A material breach with respect to part of a contract generally constitutes a material breach.

Here, Brown materially breached the fee-sharing agreement by refusing to pay Ross because Brown’s promise to pay Ross was key term of the fee-sharing agreement. As a result of this breach, Grimes’ performance was excused.

The court found error in the other findings of the trial court.