

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH NO. _____

BROWN COUNTY

JULIE GUMBAN
1785 Jo Ann Lane
Addison, IL 60101

Plaintiff,

-vs-

RON VAN DEN HEUVEL
2303 Lost Dauphin Road
De Pere, WI 54115,

KELLY VAN DEN HEUVEL
2303 Lost Dauphin Road
De Pere, WI 54115,

TISSUE PRODUCTS TECHNOLOGY, CORP.
2077 B Lawrence Drive
De Pere, WI 54115,

TISSUE TECHNOLOGY, LLC
2077 B Lawrence Drive
De Pere, WI 54115,

KYHKJG, LLC
1555 Glory Road
Green Bay, WI 54304,

Defendants.

COMPLAINT

Case No.: 12-CV 479

Case Code: 30301

FILED
MAR 2 - 2012
CLERK OF COURTS
BROWN COUNTY, WI

NOW COMES Plaintiff, Julie Gumban, by and through her undersigned attorneys, Hanaway Ross, S.C., and as and for her Complaint against the above named Defendants, alleges and shows the Court, as follows:

THE PARTIES

1. Plaintiff, Julie Gumban ("Gumban"), is an adult resident of the State of Illinois with a principal residence address located at 1785 Jo Ann Lane, Addison, Illinois. At all times relevant hereto, Gumban was a live in nanny and assistant for Defendants, Ron and Kelly Van Den Heuvel, at their residence address of 2303 Lost Dauphin Road, De Pere, Brown County, Wisconsin.

2. Defendants, Ron and Kelly Van Den Heuvel, are husband and wife, and are adult residents of the State of Wisconsin, with a current residence address located at 2303 Lost Dauphin Road, De Pere, Brown County, Wisconsin.

3. Defendant, Tissue Products Technology Corporation is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Wisconsin, with a principal office at 2077 B Lawrence Drive, De Pere, Brown County, Wisconsin.

4. Defendant, Tissue Technology, LLC is, and at all times herein mentioned was, a limited liability company organized and existing under the laws of the State of Wisconsin, with a principal business address located at 2077 B Lawrence Drive, De Pere, Brown County, Wisconsin.

5. Defendant, KYHKJG, LLC is, and at all times herein mentioned was, a limited liability company organized and existing under the laws of the State of Wisconsin, with a principal business address located at 1555 Glory Road, Green Bay, Brown County, Wisconsin.

6. The above named Defendants, and each of them, will be collectively referred to herein as the "RVDH Parties."

GENERAL ALLEGATIONS

7. Gumban incorporates by reference and in full the allegations contained in paragraphs 1 through 6, inclusive, as though fully set forth herein.

8. In or about November 2004, Gumban came to work for Defendants, Ron and Kelly Van Den Heuvel, as a personal assistant and live-in nanny for their children and, thereafter, provided domestic services, and further provided other contracted employment services for some or all of the corporate Defendants (collectively, the "Services").

9. Gumban ceased providing the Services in or about November 2010, and claimed she was due wages and other compensation from the RVDH Parties for the provision of the Services.

10. During the course of the provision of the Services, Gumban made certain cash advances to, and incurred credit card debt for, the benefit of the RVDH Parties.

THE SETTLEMENT AGREEMENT AND ITS BREACH

11. Gumban incorporates by reference and in full the allegations contained in paragraphs 1 through 10, inclusive, as though fully set forth herein.

12. In or about March 2011, Gumban made formal demand upon the RVDH Parties for wages and other benefits due as a result of provision of the Services, and further demand for reimbursement for cash and credit card advances made to or for the benefit of the RVDH Parties.

13. Subsequent to the making of the demand, Gumban, on the one hand, and the RVDH Parties, on the other hand, engaged in settlement discussions to resolve the Gumban claims in amicable fashion.

14. As a result of the settlement discussions, Gumban, on the one hand, and the RVDH Parties, on the other hand, entered into a Settlement Agreement and Mutual Release on or about June 8, 2011 (the "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit "A," and is incorporated herein by reference.

15. Among other things, the Agreement provided for:

- a. The payment to Gumban by the RVDH Parties, jointly and severally, of ONE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$125,00.00) in five (5) installment payments which were due as Stated in paragraph 2 of the Agreement.
- b. In the event that the RVDH Parties defaulted in the payment of any installment required, and such default remained uncured for a period of ten (10) days following written notice, the total settlement proceeds due and payable under the Agreement were to increase to ONE HUNDRED AND FIFTY THOUSAND DOLLARS

(\$150,000.00), immediately due and payable, less any previous payments made (paragraph 4).

- c. In the event of litigation related to the Agreement, the non-prevailing party is to pay to the prevailing party all expenses of such litigation, including reasonable attorneys' fees and other litigation costs (paragraph 17).

16. The RVDH Parties timely made the first installment of THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00), which was due at the time of the closing of the transactions contemplated by the Agreement.

17. The RVDH Parties, however, defaulted on the making of the second installment payment of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), which was due on or before July 25, 2011.

18. Pursuant to and consistent with the Agreement, on August 29, 2011, Gumban's counsel, the Hanaway Ross Law Firm, issued a default notice to the RVDH Parties demanding that the defaulted payment be cured within ten days. A true and correct copy of the August 29, 2011 default notice is attached hereto as Exhibit "B," and is incorporated herein by reference.

19. The default as Stated in the notice was not cured within the ten day grace period. Subsequent to the effective date of default, but without curing the same, the RVDH Parties caused to be paid the further sum of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) on or about October 26, 2011, but have failed and refused,

despite repeated assurances, to pay any further or additional sums due under the Agreement.

CAUSE OF ACTION - BREACH OF CONTRACT

20. Gumban incorporates by reference and in full the allegations contained in paragraphs 1 through 19, inclusive, as though fully set forth herein.

21. The RVDH Parties have breached the terms of the Agreement by failing to make the required installment payments as agreed.

22. As a consequence of the breach, Gumban is entitled to increase the gross settlement proceeds to ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) less previous payments which, taking into account the EIGHTY THOUSAND DOLLARS (\$80,000.00) in payments made, leaves a remaining balance due and immediately payable of SEVENTY THOUSAND DOLLARS (\$70,000.00), which is a joint and several obligation of the RVDH Parties, and each of them.

23. Gumban has performed all conditions, covenants and promises on her part to be performed under the terms of the Agreement.

WHEREFORE, Gumban prays for judgment, as follows:

- A. For compensatory damages in the amount of SEVENTY THOUSAND DOLLARS (\$70,000.00) due to the RVDH Parties' breach of the Agreement;

B. For costs and attorneys' fees incurred in this action as expressly authorized by the Agreement and/or as otherwise provided by Wisconsin law; and

C. For such other and further relief as the Court deems just and proper.

Dated this 2nd day of March, 2012.

HANAWAY ROSS, S.C.

BY: 

Randall L. Gast
Attorney for Plaintiff
State Bar No. 1022132

Business Address:
345 South Jefferson Street
Green Bay, WI 54301-4522
Telephone No. 920-432-3381

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Agreement") is made this 8th day of June, 2011, by and between Julie Gumban ("Gumban"), on the one hand, and Ron Van Den Heuvel, Kelly Van Den Heuvel, Tissue Products Technology, Corp., Tissue Technology, LLC, and KYHKJG, LLC (all collectively, "RVDH"), on the other hand. Gumban and RVDH will be sometimes referred to herein individually as the "Party," and collectively as the "Parties."

RECITALS

WHEREAS, in or about November 2004, Gumban came to work for Ron and Kelly Van Den Heuvel as a live-in nanny for their children, and, thereafter, provided other domestic services, and may have provided other contracted employment services to some or all of the other RVDH entities (collectively, the Services); and

WHEREAS, Gumban claims that she is due wages and other compensation for the provision of the Services (the "Wage Claim"); and

WHEREAS, during the course of provision of the Services, Gumban made certain cash advances to, and incurred credit card debt for, the benefit RVDH, or some of them (the "Debt"); and

WHEREAS, in or about October 2008, Gumban became a member of KYHKJG, LLC (the "LLC") at the request of and along with Kelly Van Den Heuvel and others; and

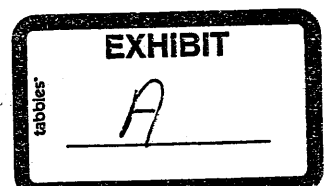
WHEREAS, the business of the LLC was to, among other things, acquire, rehabilitate and ultimately resell investment real properties; and

WHEREAS, certain disputes and differences arose between the Parties related to, among other things, liability for, and the amount of, the Wage Claim and Debt, sums reimbursable by Gumban for living expenses and/or benefits paid on her behalf, and the nature and extent of Gumban's ownership interest and liabilities associated with the LLC (collectively, the "Disputes"); and

WHEREAS, the Parties desire to end the disputes and differences between them, and to fully and finally settle all existing claims as between them on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the premises and the promises, agreements, and releases contained herein, it is agreed as follows:

1. **Incorporation.** The recitals above are incorporated here in full.



2. **Settlement Proceeds.** RVDH, and each of them, jointly and severally, shall cause to be paid to Gumban, or her attorneys on her behalf, the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00), in certified funds, pursuant to the following payment schedule:

<u>DATE DUE</u>	<u>AMOUNT</u>	<u>PAYEE</u>
Date Agreement Executed (the "Closing")	\$35,000.00	Hanaway Ross Trust Account
45 Days After Closing	\$25,000.00	Hanaway Ross Trust Account
90 Days After Closing	\$20,000.00	Hanaway Ross Trust Account
135 Days After Closing	\$20,000.00	Hanaway Ross Trust Account
180 Days After Closing	<u>\$25,000.00</u>	Hanaway Ross Trust Account
TOTAL	\$125,000.00	

Payments will be deemed timely if deposited in the United States mail, postage prepaid, to Attorney Randall L. Gast, c/o Hanaway Ross, S.C., 345 S. Jefferson St., Green Bay, WI 54301, on or before the due date.

3. **Allocation of Payments.** For accounting purposes and tax treatment, the settlement payments payable under the terms of this Agreement shall be allocated, as follows: (1) reimbursement of the credit card debt and cash advances - \$81,546.00; and (2) \$43,454.00 for the acquisition of Gumban's LLC member units, as hereinafter provided.
4. **Default in Payments.** In the event that RVDH defaults in the payment of any installment required under paragraph 2, hereof, and such default remains uncured for a period of ten (10) days following written notice sent by Gumban or her counsel solely to Ron Van Den Heuvel, 2303 Lost Dauphin Road, DePere, WI 54115, the total settlement proceeds due and payable under this Agreement by RVDH shall increase to One Hundred Fifty Thousand Dollars (\$150,000.00) and shall become immediately due and payable, less any previous payments made. In the event the settlement proceeds are increased, as herein provided, the additional Twenty-Five Thousand Dollar (\$25,000.00) payment shall be allocated to the acquisition of Gumban's LLC member units.

5. **Payments Deemed Non-Dischargeable in Bankruptcy and Preferences.** Inasmuch as the Wage Claim and Debt claims advanced by Gumban involve claims that are arguably not dischargeable in bankruptcy proceedings, and since Gumban is willing to take less than the total value of her alleged claims to here resolve them against RVDH, RVDH, and each of them, expressly stipulate and agree that the settlement payments herein required are not dischargeable in bankruptcy, and will, if required, execute a stipulation to that effect for filing in any bankruptcy proceedings hereinafter initiated by any of the RVDH Parties. In the event that the settlement proceeds payable hereunder, in whole or in part, are ordered returned to the bankruptcy estate of any RVDH Party on the basis that such payment(s) are deemed a preference, in that event, Gumban shall have the option, in her sole and absolute discretion, to declare the releases contained herein null and void, and be then free to advance her Wage Claim, Debt claim, or any other claim she has as against any or all of the RVDH Parties to their full extent. The RVDH Parties further agree that, commencing April 1, 2011, there shall be a tolling of any applicable statute of limitations or statute of repose applicable to the Wage Claim, Debt claim, or any other claim Gumban has as against all of the RVDH Parties.
6. **Return of Property.** Within thirty (30) days after Closing, the RVDH Parties shall return to Gumban all of the property belonging to her then in their possession, including, without limitation, all mail addressed to Gumban. Gumban shall, likewise, at the time of Closing return to the RVDH Parties all of the property belonging to them in her possession, including, without limitation, photo memory cards containing photographs taken of Ron and Kelly Van Den Heuvel or their family members.
7. **Warranties and Representations of the RVDH Parties.** In order to induce Gumban to enter into this Agreement, and to consummate the transactions contemplated herein, the RVDH Parties, and each of them, jointly and severally, acknowledge, covenant, represent, and warrant to Gumban, which acknowledgments, covenants, representations, and warranties shall survive the Closing, the following:
- (i) That none of them presently hold or have access to any credit or other charge accounts in the name of Gumban, or for which she is liable or responsible, and that no charges have been made on any such account by any RVDH Party since November 1, 2010, with the exception of a \$326.00 charge made on Gumban's Discovery Card on or about February 20, 2011, which Gumban will satisfy out of the settlement proceeds.
 - (ii) That there are no longer any utility, telephone, and/or cable bills utilized by, or for the benefit of, any RVDH Party which are in the name of

Gumban, or for which she is liable or responsible, and that any billings associated with any such accounts have been paid in full as of the date this Agreement is executed, including, without limitation, Time Warner Account No. 004-496854902-001.

(iii) That any and all loans from banking institutions taken out in the name of Gumban for the benefit of any RVDH Party, and, in particular, KYHKJG, LLC, have been paid in full as of the date of this Agreement, to include, without limitation, loans taken out in the name of Gumban with Nicolet and Horicon Banks in the approximate aggregate amount of Thirty Eight Thousand Dollars (\$38,000.00), and that the RVDH Parties shall produce proof of payment of any and all such loans at the time this Agreement is executed.

8. **Unit Purchase.** Ron Van Den Heuvel shall purchase all of Gumban's member units in the LLC as part of this settlement pursuant to the terms of the Unit Purchase Agreement attached hereto as Exhibit "A" for the allocated sum denoted above of \$43,454.00.

9. **Mutual Releases.** In exchange for the benefits listed herein, and with the exception of rights accruing to them under this Agreement, Gumban, on the one hand, and the RVDH Parties, on the other hand, and each of their respective predecessors, affiliates, successors, assigns and agents, hereby release and forever discharge each other, and their respective predecessors, affiliates, successors, assigns, agents, employees and insurers, from any and all liability, damages, losses, and claims arising out of, or in any way related to, the Services, Wage Claim, Debt, and the Disputes, and all other liability, damages, losses, and claims, of whatever nature and kind, known or unknown, asserted or unasserted, contingent or non-contingent, that arose or existed prior to or on the date of this Agreement.

Gumban's release of the RVDH Parties further includes any and all claims related to her employment and provision of the Services, and/or her separation from employment, including, without limitation, claims that any of the RVDH Parties:

- A. Violated any personnel policies, handbooks, contracts of employment, or covenants of good faith and fair dealing with Gumban, including, without limitation, wage claims and claims that any RVDH Party owes Gumban for any alleged vested but unpaid vacation or sick leave.
- B. Discriminated against Gumban on the basis of age, race, color, sex, national origin, ancestry, disability, religion, sexual orientation, marital status, parental status, source of income, entitlement to benefits, or any

union activities in violation of any local, state, or federal law, constitution, ordinance, or regulation, including, but not limited to: the Age Discrimination in Employment Act; Title VII of the Civil Rights Act of 1964, as amended; 42 U.S.C. § 1981; the Equal Pay Act; the Americans with Disabilities Act; the Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; or the Wisconsin Fair Employment Act; or any amendments to those laws.

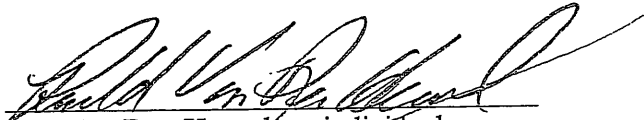
- C. Violated any public policy or common law (including claims for retaliatory discharge, negligent hiring, retention or supervision, misrepresentation, fraudulent inducement, defamation, intentional or negligent infliction of emotional distress and/or mental anguish, intentional interference with contract, negligence, detrimental reliance, loss of consortium to Gumban or any member of Gumban's family, and/or promissory estoppel).
 - D. To the extent that this Agreement seeks the release of any claims which cannot be waived by law, Gumban is waiving the right to any monetary recovery should any agency (including, but not limited to, the Equal Employment Opportunity Commission) pursue any claims on her behalf.
- 10. **Indemnification.** The RVDH Parties, and each of them, jointly and severally, hereby agree to indemnify and hold Gumban harmless from and against any and all liability, damages, losses, and claims, including, without limitation, attorneys' fees and litigation costs, which arise out of, or in any way relate to, Gumban's prior ownership position with, and/or the business affairs of, the LLC.
 - 11. **Admissions.** This Agreement pertains to a disputed claim and is a result of compromise, and, as such, it does not constitute, and shall not be deemed as, an admission of liability by any Party.
 - 12. **Costs.** The Parties shall each bear their own attorneys' fees and costs incurred in this matter and with respect to this Agreement.
 - 13. **Consultation.** In executing this Agreement, the Parties acknowledge that they have consulted with, or have been advised to consult with, an attorney duly admitted to practice in the State of Wisconsin, and that they have executed this Agreement after independent investigation, and without fraud, duress, or undue influence.
 - 14. **Prior Assignments.** Except as otherwise provided herein, the Parties represent and warrant that they have not assigned, or otherwise transferred or subrogated, any interest in any claims which are the subject matter of the releases hereto that

they have, or may have, as against any other Party. The Parties agree to indemnify and hold harmless any other Party from any liability, loss, claims, demands, damages, costs, expense, or attorneys' fees incurred by such other Party as a result of any person or entity asserting such assignment, transfer, or subrogation interest.

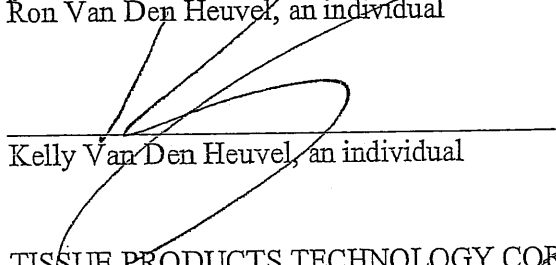
15. **Integration.** This Agreement contains the entire agreement and understanding concerning the subject matter between the Parties and supersedes and replaces any and all prior negotiations, proposed agreements, and agreements, written or oral. Each Party acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the other Party to execute this Agreement; and each Party acknowledges that it has not executed this Agreement in reliance on any such promise, representation, or warranty not contained herein. This Agreement shall not be modified, amended, or supplemented, and no provision of this Agreement shall be waived, except by an agreement in writing signed by the Parties.
16. **Governing Law and Venue.** This Agreement is made and entered into in the State of Wisconsin, and the Parties agree that it shall, in all respects, be interpreted, enforced, and governed under the laws of this State, except where applicable federal law applies. The language in all parts of this Agreement shall be, in all cases, construed as a whole, according to its meaning, and not strictly for or against any Party. The Parties further agree that the exclusive venue for the resolution of any dispute associated with this Agreement shall be the Brown County, Wisconsin Circuit Court.
17. **Litigation Costs.** In the event of litigation related to this Agreement, the non-prevailing Party shall pay to the prevailing Party all expenses of such litigation, including reasonable attorneys' fees and other litigation costs.
18. **Cooperation.** The Parties hereto, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to more effectively consummate the subject matter hereof.
19. **Severability.** Should any provision of this Agreement be declared or determined by any Court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall not be deemed to be a part of this Agreement.
20. **Section Headings.** The headings in this Agreement are for purposes of convenience and ease of reference only, and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

22. **Authority.** Each signatory to this Agreement warrants and represents that he/she has full authority to execute the Agreement on behalf of the Party for whom he/she has signed.
23. **Confidentiality and Nondisparagement.** The Parties and their respective counsel agree that the terms of this Agreement, and the fact that a settlement and compromise has been reached, shall be confidential, and shall not be disclosed to any third party, excepting corporate officers or employees, where applicable, with a need to know, and, further, to accounting, legal and/or tax advisors, or as otherwise required by law. The Parties, and, as to any corporate entity, its respective boards, directors and officers, agree that they will make no disparaging statements of and concerning the other Party. For purposes of this Agreement, the phrase "disparaging statements" shall include, but not necessarily be limited to, statements which cast a negative light on the other Party, and/or which would harm the reputation of the other Party as to lower his, her or its respect in the estimate of the business or general community, or which would tend to deter third persons from associating or dealing with the other Party.

IN WITNESS WHEREOF, the Parties hereto and/or their authorized representatives have executed this Agreement effective as of the date above written.

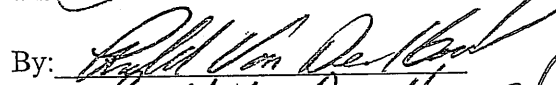


Ron Van Den Heuvel, an individual

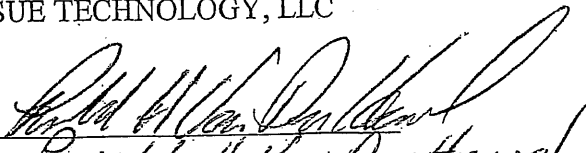


Kelly Van Den Heuvel, an individual

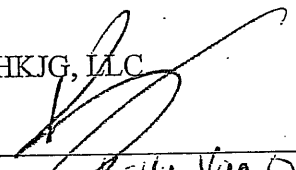
TISSUE PRODUCTS TECHNOLOGY CORP.

By: 
Name: Ronald Van Den Heuvel
Title: President

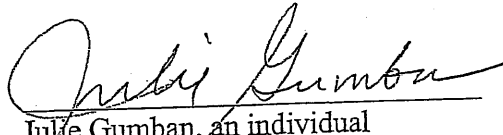
TISSUE TECHNOLOGY, LLC

By: 
Name: Ronald H. Van Den Heuvel
Title: President

KYHKJG, LLC

By: 
Name: Billy Van Den Heuvel
Title: Mer

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Julie Gumban, an individual