

STATE OF WISCONSIN

CIRCUIT COURT V

BROWN COUNTY

JULIE GUMBAN  
1785 Jo Ann Lane  
Addison, IL 60601

Plaintiff,

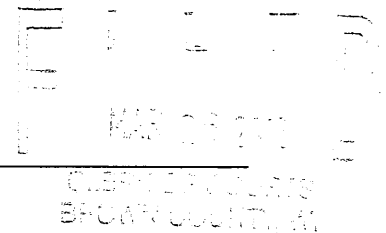
v.

Case No. 12CV479

Money Judgment 30301

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

Defendant.



**ANSWER OF DEFENDANT  
KELLY Y VAN DEN HEUVEL**

NOW COMES DEFENDANT Kelly Y Van Den Heuvel (hereafter "Defendant").

by and through her attorney, Ty Willinganz, answering the allegations made in  
Plaintiffs Complaint and affirms, denies, and alleges as follows:

1. AFFIRMED IN PART, DENIED IN PART. Plaintiff is put to its proof as to whether Ms. Gumban did indeed provide nanny services or assistance for Defendants at all times relevant to the allegations made in this claim;
2. AFFIRMED.
3. AFFIRMED.
4. AFFIRMED.

cn

5. DENIED IN PART. Upon information and belief, Defendant KYHKJG, LLC is a limited liability company organized and existing under the laws of the State of Wisconsin, but that it does not have a place of business located at 1555 Glory Road, Green Bay, Brown County, Wisconsin.

6. NEITHER AFFIRMED NOR DENIED.

7. NEITHER AFFIRMED NOR DENIED.

8. DENIED. The specific allegations made in Paragraph 8 are hereby denied and Plaintiff is put to its proof thereof.

9. DENIED. The allegations in Paragraph 9 are denied and Plaintiff is put to its proof thereof.

10. DENIED. The specific allegations made in Paragraph 10 are hereby denied and Plaintiff is put to its proof thereof.

11. NEITHER AFFIRMED NOR DENIED.

12. DENIED. The specific allegations made in Paragraph 12 are hereby denied and Plaintiff is put to its proof thereof.

13. DENIED. Defendant hereby puts Plaintiff to its proof as to whether any authorized Settlement Agreement was ever made with this particular Defendant.

14. DENIED IN PART. Defendant hereby puts Plaintiff to its proof as to whether the attached Exhibit A is a true and correct copy of any alleged Settlement Agreement.

15. DENIED. The allegations set forth in Paragraph 15 are collectively denied and Plaintiff is put to its proof thereof.

16. AFFIRMED.

17. DENIED. The allegations set forth in Paragraph 17 are hereby denied and Plaintiff is put to its proof thereof.

18. DENIED. Defendant lacks the knowledge sufficient to either admit or deny the allegations set forth in Paragraph 18, and so said allegations are hereby denied and Plaintiff is put to its proof.

19. DENIED. The allegations set forth in Paragraph 19 are hereby denied and Plaintiff is put to its proof thereof.

20. NEITHER AFFIRMED NOR DENIED.

21. DENIED. The allegations set forth in Paragraph 21 are hereby denied and Plaintiff is put to its proof thereof.

22. DENIED.

23. DENIED.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense – Substantial or Partial Performance**

24. If any contract alleged by Plaintiff in its Complaint exists, the same has been substantially and/or partially performed, and as such, is subject to divisibility and reduction of recovery or complete bar from recovery;

### **Second Affirmative Defense – Waiver**

25. Defendant alleges that Plaintiff knew that Defendant, as one of the collectively referred to “RVDH Parties”, lacked the funding capacity necessary to the perform in the manner alleged and Plaintiff’s actions and omissions thereafter demonstrate an intent to waive its right to recover on the claims and in the amounts alleged against Defendant in its Complaint and bar it from recovery;

### **Third Affirmative Defense – Release of All Claims**

25. That the acts and omissions of Plaintiff constitute an affirmative release of Defendant from any claims and obligations alleged by Plaintiff in its Complaint and that as a result Plaintiff is barred from recovery;

### **Fourth Affirmative Defense – Failure to Mitigate Damages**

26. Assuming the existence of any damages owed to Plaintiff by Defendant based on the claims alleged in its Complaint, which claims Defendant does specifically deny, then said damages must be reduced by an amount deemed appropriate by

this Court on the grounds that Plaintiff has failed to take all reasonable steps necessary to mitigate the amount of said damages;

**Fifth Affirmative Defense – Offset**

27. Defendant believes that it has suffered damage by reason of the conduct of Plaintiff and that it therefore has the right of offset if any amount of money owed to Plaintiff or due to Plaintiff by way of damages;

**Sixth Affirmative Defense – Unclean Hands**

29. Defendant alleges that to the extent Plaintiff seeks equitable relief, the granting of the same is barred on the grounds that the inequitable conduct of Plaintiff in this matter has left Plaintiff with unclean hands;

**Seventh Affirmative Defense – Estoppel and *Res Judicata***

30. Defendant asserts that Plaintiff may be barred from recovery by the doctrine of estoppel and/or res judicata;

**Ninth Affirmative Defense – Failure to State a Claim**

31. As a matter of law, Plaintiff has failed to allege facts that would constitute a valid claim against Defendant upon which this Court might grant relief;

**Tenth Affirmative Defense – Lack of Jurisdiction**

32. As the Plaintiff, by her own admission, is not a resident of the State of Wisconsin, this Court may not have the proper jurisdiction over the parties to this case or indeed the subject matter of this case;

**Eleventh Affirmative Defense – Statute of Limitations**

33. That the Plaintiff's suit or any part thereof may be barred by reason of having been brought outside the specified statutory time limitations;

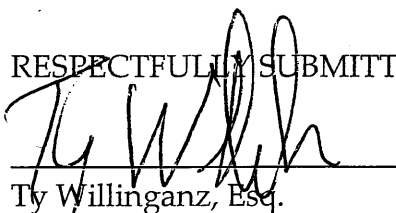
*Wherefore the Complaint having been fully answered*, Defendant prays that this Court grant her judgment in the following manner:

A. That Plaintiff's Complaint against her be dismissed with prejudice;

B. For any further relief this Court may deem appropriate.

Dated this 25<sup>th</sup> day of March, 2012.

RESPECTFULLY SUBMITTED,



Ty Willinganz, Esq.

State Bar No. 1026693

Defendant's Attorney

2077B Lawrence Drive

De Pere, Wisconsin 54115

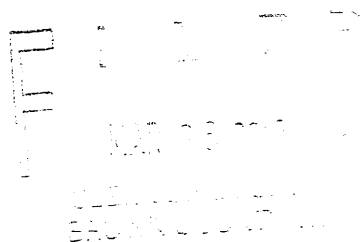
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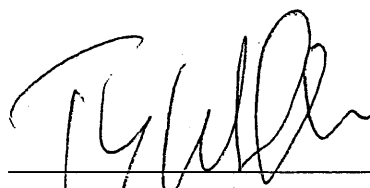
**CERTIFICATION OF SERVICE**

I HEREBY CERTIFY that on this March 22, 2011, a copy of the foregoing was sent, postage prepaid, to Plaintiffs counsel at the following address:

Attorney Randall Gast

Hanaway, Ross, SC

345 South Jefferson Street  
Green Bay, WI 54301-4522  
*Counsel for Plaintiff*



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Ty C Willinganz