
JULIE GUMBAN

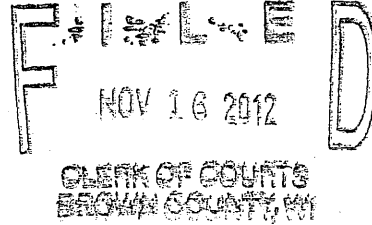
Plaintiff,

Case No.: 12-CV-479

-vs-

Case Code: 30301

RON VAN DEN HEUVEL,
KELLY VAN DEN HEUVEL,
TISSUE PRODUCTS TECHNOLOGY, CORP.,
TISSUE TECHNOLOGY, LLC, and
KYHKJG, LLC.



Defendants.

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW AND ARGUMENT IN SUPPORT**

MOTION

PLEASE TAKE NOTICE that the Plaintiff, Julie Gumban, hereby moves the Court, pursuant to the provisions of Section 802.08 of the Wisconsin Statutes, for summary judgment against each of the named Defendants herein. This matter shall come on for hearing before the Court at a date and time to be set by the Court.

The grounds for this motion are that Defendants have concededly failed to make payments due under the undisputed terms of a Settlement Agreement and Mutual Release. There are no material issues of disputed fact, and Plaintiff is entitled to judgment as a matter of law. This motion is based on the accompanying memorandum of law, the affidavit of Randall L. Gast filed contemporaneously herewith, and upon all pleadings and records on file herein.

MEMORANDUM OF LAW AND ARGUMENT

Summary judgment is not a disfavored remedy. It is appropriate where the material facts are not in dispute and where reasonable inferences are not doubtful and lead to but one conclusion. *See, e.g., Radlein v. Industrial Fire & Casualty Ins. Co.*, 117 Wis.2d 605, 609, 345 N.W.2d 874 (1984). Contract cases are ripe for application of summary judgment methodology. Where a contract is unambiguous, the interpretation of the contract is solely a question of law to be decided by the court. *See, e.g., Jos. P. Jansen Co. v. Milwaukee Area Dist. Bd.*, 105 Wis.2d 1, 13, 16, 312 N.W.2d 813 (1981); *Eder v. Lake Geneva Raceway, Inc.*, 187 Wis.2d 596, 607-12, 523 N.W.2d 429 (Ct. App. 1994).

On June 8, 2011, a Settlement Agreement and Mutual Release (the “Settlement Agreement”) was entered into between Plaintiff, Julie Gumban (“Gumban”), on the one hand, and Defendants Ron Van Den Heuvel, Kelly Van Den Heuvel, Tissue Products Technology, Corp., Tissue Technology, LLC, and KYHKJG, LLC (collectively, the “RVDH Parties”), on the other hand.¹ Among other things, the Settlement Agreement provided for:

- a. The payment to Gumban by the RVDH Parties, jointly and severally, of ONE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) in five (5) installment payments which were due as stated in paragraph 2 of the Settlement 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 Settlement 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).

¹A true and correct copy of the Settlement Agreement is attached as Exhibit “A” to the Affidavit of Randall L. Gast (“Gast Aff.”) filed contemporaneously herewith.

The RVDH Parties timely made the first installment payment of Thirty-Five Thousand Dollars (\$35,000.00), which was due at the time of the closing of the transactions contemplated by the Agreement.² The RVDH Parties, however, defaulted on the second installment payment of Twenty-Five Thousand Dollars (\$25,000.00), which was due on or before July 25, 2011.³

On August 29, 2011, pursuant to and consistent with the Settlement Agreement, the Hanaway Ross law firm, as Gumban's counsel, issued a default notice to the RVDH Parties demanding that the defaulted payment be cured within ten days.⁴ The default, as stated in the notice, was not cured within the ten day grace period.⁵

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, 2011.⁶ The RVDH Parties have failed and refused, despite repeated assurances, to pay any further or additional sums due under the Settlement Agreement, thereby breaching the Agreement's terms.⁷

On or about March 26, 2012, the RVDH Parties filed Answers to the Complaint, but did not interpose any meritorious defenses. Despite having executed the Settlement Agreement and

²See Gast Aff. at para. 4.

³*Id.* at para. 5.

⁴*Id.* at para 6 and Exhibit "B."

⁵*Id.* at para 7.

⁶*Id.*

⁷*Id.*

making partial payments thereunder, the RVDH Parties, in their respective Answers, purported to deny in part the authenticity of the Settlement Agreement.

In order to pin the RVDH Parties down on the authenticity of the Settlement Agreement, on June 22, 2012 Gumban caused to be served on the RVDH Parties Plaintiff's First Set of Requests to Admit, Interrogatories, and Document Requests (the "Discovery Requests").⁸ The RVDH Parties failed to answer the Discovery Requests.⁹ Accordingly, pursuant to Section 804.11(b), Wis. Stats., the Requests for Admissions are deemed admitted. The admitted requests confirm the authenticity of the Settlement Agreement, that each of the RVDH Parties executed the Settlement Agreement, and that the RVDH Parties received the notice of default.

Pursuant to the terms of the Settlement Agreement, Gumban is entitled to the increased gross settlement proceeds of One-Hundred Fifty Thousand Dollars (\$150,000.00), less previous payments received. The RVDH Parties previously made payments to Gumban totaling Eighty Thousand Dollars (\$80,000.00), thereby leaving 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, under the terms of the Settlement Agreement.

The Settlement Agreement further provides:

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).

⁸*Id.* at para. 10 and Exhibit "C."

⁹*Id.*

The attorney fees and costs incurred in this action and related to the enforcement of the Settlement Agreement will be submitted in itemized fashion to the Court for review, consideration, and approval following the grant of summary judgment.

Respectfully submitted this 16th day of November, 2012.

HANAWAY ROSS, S.C.

By: 

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