

62931-0

62931-0

No. 62931-0-I
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

WILLIAM AND TERESA GROVER,

Appellants,

v.

LOSH FAMILY, LLC, and ILIA KERTSMAN,

Respondents.

BRIEF OF APPELLANTS

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COURT OF APPEALS
STATE OF WASHINGTON

ORIGINAL

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I. INTRODUCTION

On November 10, 2004, Ilia Kertsman signed a five-year lease as tenant for a commercial property in Renton, Washington. J. Brian Losh signed the lease and was identified as the landlord, but he did not own the property. The Losh Family Limited Partnership did. The lease was not acknowledged. The legal description in the lease was incomplete and incorrect beyond repair.

In December 2005, Kertsman sold the assets of his business to Grover International, LLC. In connection with the sale, Kertsman assigned the lease to Grover International. Losh prepared an Assignment of Lease reciting that the lease was being assigned to "William and Teresa Grover, as individuals, dba Grover International, LLC. The only tenant signature on the assignment is a standard form entity signature of Grover International, LLC.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the date set forth below.	
ASSIGNEE: <u>Grover International, LLC</u> <u>by Will G. Carr member</u>	Date: <u>12/12/05</u>
ASSIGNOR: <u>Baza Int'l LLC</u> <u>by Ilia Kertsman member</u>	Date: <u>12/12/05</u>
LESSOR: <u>[Signature]</u>	Date: _____

After Grover International executed the Assignment, it was returned to Losh, who accepted the assignment by signing it as Lessor.

On March 2006, William and Teresa Grover sold the membership units of Grover International LLC to Yuri Sushkin and Tatyana Rubtsova. The transaction included an assumption of the lease by Sushkin and Rubtsova, but recited that the Grovers denied any interest in the lease.

Sushkin and Rubtsova ceased paying rent in November 2006. A three-day notice followed, and the property was vacated. On January 4, 2008, Losh Family, LLC commenced this action claiming to be the successor to the Losh Family Limited Partnership and the landlord.

Losh Family, LLC brought a motion for summary judgment, and the Grovers brought a cross motion. In a September 30, 2008 letter ruling, the trial court, Judge Deborah D. Fleck, ruled as a matter of law that Losh Family, LLC was the real party in interest, curing any misidentification of the landlord in the lease; (2) that the failure to satisfy the statute of frauds was cured under the part performance doctrine; and (3) that Bill Grover's signature as a member of Grover Internationally personally bound the Grovers because the text of the assignment recited that they were parties to the assignment.

The trial court granted summary judgment for Losh and Kertsman, ruling that no reasonable factfinder could fail to find that they had met their burden of proof. This Court should reverse and grant summary judgment to the Grovers.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it granted the motions of Losh Family, LLC and Kertsman for summary judgment.
2. The trial court erred when it denied the cross motion Grover for summary judgment.
3. The trial court erred when it awarded Losh Family LLC and Kertsman attorney fees.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does a lease for more than a year require a valid legal description? (Assignments of error 1, 2, and 3).
2. Is a lease for more than a year that contains no valid legal description treated as a lease for one year and thereafter month to month? (Assignments of error 1, 2, and 3).
3. Was the signature of the lessee on the Assignment of Lease a valid signature of Grover International, LLC? (Assignments of error 1, 2, and 3).
4. Are the Grovers personally bound by the signature to the Assignment of Lease? (Assignments of error 1, 2, and 3).
5. Does the recital of the Grovers' names personally in the body of the Lease Assignment bind them when they did not execute the document? (Assignments of error 1, 2, and 3).

6. Did the trial court properly find that Losh Family, LLC and Kertsman were the prevailing parties for purposes of awarding attorney fees? (Assignment of error 3).

7. Should the Grovers be awarded attorney fees as the prevailing party? (Assignment of error 3).

IV. FACTUAL BACKGROUND

On November 10, 2004, Ilia Kertsman, dba Baza International, LLC, signed a five-year lease as tenant for a commercial property in Renton, Washington. CP 79-84. A copy of the Lease is attached as Appendix I. J. Brian Losh signed the lease and was identified as the landlord. CP 79, 84.

However, Losh did not own the property; it belonged instead to the Losh Family Limited Partnership did. CP 75 at ¶ 2. Mr. Losh claims that he actually signed the lease on behalf of the Losh Family Limited Partnership, but he never identifies his position or authority to bind the entity. CP 75 at ¶ 2.

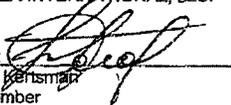
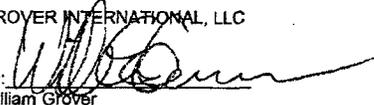
The lease was not acknowledged. CP 84. The Lease describes the property as

Approximately 10,000 square feet on the ground floor located on the southerly section of Lots 4, 5, 6, Block 20 of the City of Renton as recorded in Plats, Records of King County.

CP 79 at ¶ 1. This description does not identify the name of the purported plat or the volume and page number in the plat records where the recorded plat could be found.

Paragraph 3 of the Lease states that the landlord would repair a leak in the roof and pay \$6,000 towards the installation of an air conditioning system. CP 84 at ¶ 39. The record contain no evidence whether this promise was performed.

In December 2005, Baza International, LLC sold its assets to Grover International, LLC. CP 94 at ¶ 3 (Grover Declaration); CP 100-01 (Bill of Sale). The Bill of Sale was executed by Baza International, LLC and Grover International, LLC using standard entity signatures.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date first above written.	
SELLER:	BUYER:
BAZA INTERNATIONAL, LLC.	GROVER INTERNATIONAL, LLC
By: 	By: 
Ilia Kertsman Member	William Grover Member

CP 101. A copy of the Lease Assignment is attached as Appendix II.

The asset sale included the Lease. CP 94 at ¶4. Losh prepared an Assignment of Lease reciting that the lease was being assigned from “Ilia Kertsman dba Baza International, LLC” to “William and Teresa Grover, as individuals, dba Grover International, LLC. Both Baza International

and Grover International executed the Assignment with the same standard entity signatures as the Bill of Sale.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the date set forth below.	
ASSIGNEE: <u>Grover International, LLC</u> by <u>William Grover</u> member	Date: <u>12/12/05</u>
ASSIGNOR: <u>Baza Intl LLC</u> by <u>Ilia Kikotskaya</u> member	Date: <u>12/12/05</u>
LESSOR: <u>[Signature]</u>	Date: _____

CP 87. After Baza International and Grover International executed the Assignment, it was returned to Losh, who then executed the Assignment as Lessor. CP 74 at ¶ 76 (Losh Declaration). There is no evidence that Losh objected to the entity signatures or requested personal signatures.

After purchasing the assets from Baza International, Grover International operated a wholesale food business from the premises. CP 95 at ¶ 5 (Grover Declaration). Grover International obtained a business license to continue operating under the trade name Baza International and operated with its own bank accounts. CP 95 at ¶ 5; CP 103 (record of business license issued on December 1, 2005); CP 105-10 (Bank account records including rent checks from account for rent).

On March 2006, William and Teresa Grover sold the membership units of Grover International LLC to Yuri Sushkin and Tatyana Rubtsova. CP 112 (Bill of Sale). The transaction included an assumption of the lease

by Sushkin and Rubtsova. CP 9. That assumption expressly states that the Grovers disputed being assignees of the Lease. CP 89.

Sushkin and Rubtsova ceased paying rent in November 2006. CP 76 at ¶9 (*Losh Declaration). A three-day notice followed, and the property was vacated. CP 76-77 at ¶10. On January 4, 2008, Losh Family, LLC commenced this action claiming to be the successor to the Losh Family Limited Partnership and the landlord. CP 3-23. Kertsman and Grover each asserted cross claims against the other. CP 24-48 (Kertsman); CP 52-55.

Losh Family, LLC brought a motion for summary judgment against all parties, and the Grovers brought a cross motion for dismissal. CP 56-74 (Losh motion); CP 113-18 (cross motion). In a September 30, 2008 letter ruling, the trial court, Judge Deborah D. Fleck, ruled as a matter of law that Losh Family, LLC was the real party in interest, curing any misidentification of the landlord in the lease; (2) that the failure to satisfy the statute of frauds was cured under the part performance doctrine; and (3) that Bill Grover's signature as a member of Grover Internationally personally bound the Grovers because the text of the assignment recited that they were. CP 166-71.

Based on the trial court's ruling, Kertsman brought a motion for summary judgment against Grover, which was granted. 346-63 (motion);

CP 520-22. The Court subsequently awarded Losh and Kertsman contractual attorney fees and entered judgment against the Grovers. CP 600-04. The trial court later issued a Corrected Judgment and Second Correct Judgment. CP 640-44 (Corrected Judgment); 645-49 (Second Corrected Judgment).

V. LEGAL ANALYSIS

A. Standard of Review.

The standard of review on an order granting summary judgment is, of course, *de novo*. *Osborn v. Mason County*, 157 Wn.2d 18, 22, 134 P.3d 197 (2006). When considering a motion for summary judgment, the court can also determine whether the undisputed evidence warrants entry of summary judgment against the moving party. *Home Realty Lynnwood, Inc. v. Walsh*, 146 Wn.App. 231, 236, 189 P.3d 253, 256 (2008) (“Summary judgment may be granted to the nonmoving party “if it becomes clear that he or she is entitled thereto” and the original moving party has had an adequate opportunity to present materials and argument in rebuttal.”).

B. The Grovers Are Not Personally Liable Under the Assignment.

As Justice Stevens succinctly stated in *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294, 122 S.Ct. 754, 151 L.Ed.2d 755 (2002): “It goes without saying that a contract cannot bind a nonparty.” *Accord Madison*

v. *La Sene*, 44 Wash.2d 546, 551, 268 P.2d 1006, 1009 (1954) (“[Defendant] was not a party to the restrictive covenant and cannot be bound by its terms except in so far as his activities constitute a conspiracy for its breach, which is, in effect, a conspiracy for unfair competition.”).

To be a party to a contract, one must objectively manifest assent to be bound by its terms. *Keystone Land & Development Co. v. Xerox Corp.* 152 Wn.2d 171, 177, 94 P.3d 945, 949 (2004) (“Accordingly, for a contract to form, the parties must objectively manifest their mutual assent.”). When a contract is in writing, parties express their intent to be bound by signing it. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 799, 64 P.3d 22, 27-28 (2003).

A party who asserts the existence of a contract with another party has the burden of proof. *Johnson v. Nasi*, 50 Wn.2d 87, 91, 309 P.2d 380, 382 (1957) (“The burden of proving a contract, whether express or implied, is on the party asserting it, and he must prove each essential fact, including the existence of a mutual intention.”). Mutual assent to a contract is a question of fact. *Keystone Land & Development Co. v. Xerox Corp.*, 152 Wn.2d 171, 178 n.10, 94 P.3d 945, 949 (2004).

This, of course, is not the first dispute over who was bound by a signature on a contract. In *Wilson Court Ltd. Partnership v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 700, 952 P.2d 590, 594 (1998), the

Supreme Court elaborated on the test to determine whether a signature binds the signer personally or only the entity.

First, the court must determine whether the signature is ambiguous. *Id.* at 700-01. Signatures that may have been personal or representative of an entity have been found ambiguous when the entity is not named, but a title follows the name, such as “John Doe, President.” *Id.* That, however, is not the case here. The signature in this case uses the universally accepted form of entity signature:

Grover International, LLC,
by William Grover, member

CP 87. This form of signature has been called “perhaps the safest way in which executives of a corporate maker may execute a note on behalf of the corporation without the risk of an argument that they are (or either of them is) executing it in a personal rather than in a representative capacity.”

7 Wash. Practice 2008 Supplement, p. 474, 3-402, FORM 2 (2008). Similarly, in *St. Regis Paper Co. v. Wicklund*, 24 Wn.App. 552, 556, 597 P.2d 926, 929 (1979), *reversed on other grounds*, 93 Wn.2d 497, 610 P.2d 903 (1980), this Court quoted the comments to a former version of RCW 62A.3-403 that this form of signature is “[t]he unambiguous way to make the representation clear.”

The trial court appears to have determined that the signature was ambiguous, but nonetheless ruled that it could resolve that question on summary judgment. CP 168-68. The trial court reached its conclusion by reference to the language of the Assignment itself, rather than the form of the signature. Because the text of the Assignment recited that the Grovers were personally bound, the trial court reasoned that the signature could only be construed as their personal signature. CP 168-69 (“However, the Assignment does not state that it is being entered into by the LLC with a member signing the LLC.”).

This rationale is without precedent. The fact that the Assignment was executed by Grover International, LLC instead of the Grovers may have a number of consequences regarding contract formation and enforceability, but the signature of one legal persona cannot be used to bind another. In this regard, the trial court entered judgment personally against Teresa Grover even though she did not execute the Assignment in any capacity. CP 645.

The signature on the Assignment of Lease was unambiguously a signature of Grover International, LLC, a valid and existing limited liability company. It is the only relevant signature on the document. Neither of the Grovers personally signed the Assignment as a matter of law, and the Court therefore should hold that they are not personally liable

under the assignment. There is not a single shred of evidence that either of the Grovers ever agreed to be personally bound to the Assignment, and the Court therefore should dismiss them from this action as a matter of law.

C. The Absence of a Valid Legal Description Is Fatal to Losh's and Kertsman's Claims.

Even if the signature in the Assignment raised a question of fact, the Lease itself was never enforceable as more than a month to month lease. A lease for more than a year must contain a legal description of the property. *Richards v. Redelsheimer*, 36 Wash. 325, 78 P. 934 (1904); *Knight v. American Nat. Bank*, 52 Wash.App. 1, 5-6, 756 P.2d 757, 760 (1988). A lease that fails to satisfy the statute of frauds is effective as a month-to-month agreement. *Haggen v. Burns*, 48 Wn.2d 611, 613-614, 295 P.2d 725, 727 (1956); *Garbrick v. Franz*, 13 Wn.2d 427, 430, 125 P.2d 295, 297 (1942).

A valid legal description must identify the plat or addition. *Home Realty Lynnwood, Inc. v. Walsh*, 146 Wn.App. 231, 237, 189 P.3d 253, 256 (2008) (citing *Martin v. Seigel*, 35 Wn.2d 223, 229, 212 P.2d 107 (1949)). Here, the legal description was indecipherable:

Approximately 10,000 square feet on the ground floor located on the southerly section of Lots 4, 5, 6, Block 20 of the City of Renton as recorded in Plats, Records of King County.

CP 79 at ¶ 1. This description could not be used to identify the property

because it could be any plat or addition in Renton.

Losh did not argue that the legal description was adequate. Instead, he argued that the lack of a legal description was cured through part performance. The trial court found that Losh had proven part performance as a matter of law.

It is true that part performance can satisfy the statute of frauds, but Losh offered no evidence of part performance by the Grovers. Part performance requires proof of conduct that would be consistent only with the written agreement.

Part performance removes a contract from the statute of frauds if a party is able to show: “(1) delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial and valuable improvements, referable to the contract.” *Powers*, 93 Wash.2d at 717, 612 P.2d 371; *Berg v. Ting*, 125 Wash.2d 544, 555, 886 P.2d 564 (1995) (applying doctrine of part performance to agreements containing inadequate legal descriptions). A strong case for the application of the part performance doctrine exists where all three factors are established. *Berg*, 125 Wash.2d at 557, 886 P.2d 564.

Pardee v. Jolly, 163 Wn.2d 558, 567, 182 P.3d 967, 972-73 (2008). If the conduct would be equally consistent with a different agreement, then part performance has not been proven. *Wagers v. Associated Mortg. Investors*, 19 Wn.App. 758, 767, 577 P.2d 622, 627 (1978).

The only substantive argument that Losh ever made for part performance was his claim that the Grovers:

ignore the Lease's "LANDLORD IMPROVEMENTS" provision: "Tenant agrees to pay for the remaining balance towards the installation of an air conditioning system and new office carpet." The Lease was attached to the Grover assignment "and made part hereof as though set forth at length herein." Thus, Defendants not only performed on the five-year lease but also contracted to make substantial long-term improvements to the premises. Certainly air conditioning and carpet were contracted and installed for the benefit and enjoyment of the tenants.

CP 141. The trial court adopted that argument and further ruled that: "The Grovers acknowledge both possession and payment." CP 171. Neither justification has any support in the record.

First, Losh presented no evidence that any improvements had been made; he simply asserted that the contract called for them. Losh's declaration makes no mention of the improvements. CP 75-77. Losh did submit a declaration of the property manager in reply, but it too made no mention of any improvements. CP 143-44. The trial court acknowledged that Losh had presented no such evidence, but found an "inference raised by the contract term itself" that the work had been done. CP 170.

With regard to the trial court's ruling that the Grovers "acknowledge both possession and payment" (CP 171), the trial court did not accurately consider the evidence submitted. The Grovers

acknowledged possession and payment by Grover International, LLC, not by themselves personally.

After the purchase, Grover International, LLC operated a business at the subject premises. My wife and I did not personally conduct business.

CP 95 at ¶ 5 (William Grover Declaration). This evidence was supplemented with undisputed proof that Grover International, LLC was a valid limited liability company, obtained a license to do business at the premises and paid rent from its business account. CP 97-98, 103, 105-10.

Moreover, Losh must prove Grover's part performance not of the Lease, but of the Lease Assignment. Part Performance is essentially a kind of estoppel. *Tiegs v. Watts*, 135 Wn.2d 1, 15-16, 954 P.2d 877, 885 (1998). Losh must prove part performance of the assignment of the lease. *See National Laundry Co. v. Mayer*, 79 Wash. 212, 140 P. 393 (1914) (part performance of lease did not constitute part performance of option to renew because renewal would be a different contract); *Friedl v. Benson*, 25 Wn.App. 381, 609 P.2d 449 (1980). The assignment contained no valid legal description, but instead used the defective legal description from the lease.

The trial court acknowledged the requirement that "the acts relied upon as constituting part performance must unmistakably point to the existence of the claimed agreement. If they point to some other

relationship . . . or may be accounted for on some other hypothesis, they are not sufficient.” CP 171 (quoting *Miller v. McCamish*, 78 Wn.2d 821, 826, 479 P.2d 919, 922 (1971) (quoting *Granquist v. McKean*, 29 Wn.2d 440, 445, 187 P.2d 623, 626 (1947))). However, the trial court never explained how possession and payment of rent unmistakably pointed to a five year lease as opposed to a month to month lease.

Even if the record presents factual issues concerning part performance by Kertsman and Grover International, LLC, it is devoid of any evidence concerning Bill and Teresa Grover personally. The trial court erred when it found the lease to be effective as more than a month to month lease. The Grovers performed the lease while they occupied it, and Sushkin and Rubtsova performed it for more than a month after they assumed it. The Grovers have no liability under the Lease as a matter of law.

D. The Grovers Are Entitled to An Award of Attorney Fees

Paragraph 21 of the Lease contains a broad attorney fee provision. CP 82. Although much of the case law concerning attorney fee awards has been cast into doubt by *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 487-488, 200 P.3d 683, 686 (2009), the equitable principle of mutuality of remedy applies in this case. *Kaintz v. PLG, Inc.*, 147 Wn.App. 782, 787-788, 197 P.3d 710, 713 (2008). Losh and Kertsman

sought and received fee awards based on their allegation that the Grovers were personally liable under the Assignment of Lease. They are estopped from denying that the Grovers are entitled to fees if they prevail.

D. Summary of Relief Requested.

The trial court entered a final judgment against the Grovers in favor of Losh for \$112,417.86 and in favor of Kertsman for \$37,426.77. In addition, the trial court ordered the Grovers to indemnify Kertsman for the judgment in favor of Losh. All of these judgments are expressly predicated on the Grovers' personal liability under the Assignment of Lease.

The Grovers request that this Court rule as a matter of law that they are not parties to the Assignment of Lease. Because they are not parties to the Lease, the Grovers are not liable for breach by any other party. All judgments should be reversed, and the Court should award Grovers attorney fees.

Alternatively, the Court should find that the Lease did not comply with the Statute of Frauds, and that no evidence of part performance was presented. The Court therefore should find that the Grovers were not liable for more than one month after the assumption by Sushkin and Rubtsova. Because Losh admits that the lease was performed for several months by Sushkin, the Grovers have no liability under the Lease or the

assignment. All judgments were based on the Lease and Assignment and therefore should be reversed. Because the Grovers would be the prevailing parties, they should be awarded attorney fees.

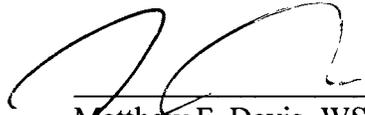
At a minimum, the Court should reverse the trial court on the grounds that questions of fact preclude summary judgment in favor of Losh and Kertsman. Specifically, if the signature on the Assignment of Lease is not unambiguously a representative signature, then it is ambiguous, and any ambiguity must be resolved at trial. Similarly, if Losh has presented any evidence of part performance, he has not shown that he conclusively has met his burden of proof on part performance as a matter of law. In either event, the trial court's award of summary judgment should be reversed and this matter remanded for trial.

VI. APPENDIX

- I. Lease Agreement (CP 79-85)
- II. Assignment of Lease (CP 87)

DATED this 10th day of July, 2009.

DEMCO LAW FIRM, P.S.



Matthew F. Davis, WSBA No. 20939
Attorneys for William and Teresa Grover

LAAS NOSTE WSBA #20939 for Matt Davis

APPENDIX I



"Real Estate Service Since 1900"

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COPY

COMMERCIAL LEASE

THIS LEASE, made in triplicate this 10th day of November, 2004, by and between J. Brian Losh hereinafter referred to as Lessor, and Ilia Kertsman dba Baza International, LLC hereinafter referred to as Lessee,

WITNESSETH:

1. The Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, those certain Premises situated in the City of Renton, County of King, Washington described as follows:

Approximately 10,000 square feet on the ground floor located on the southerly section of Lots 4, 5, 6, Block 20 of the City of Renton as recorded in Plats, Records of King County.

hereinafter called "Premises." Commonly known as 329 Wells Avenue South, Renton, WA 98055-2740

BUSINESS PURPOSE

2. The Premises are to be used for the purpose of conducting therein office, warehouse and sales of ethnic foods and for no other business or purpose, without the written consent of Lessor.

TERM

3. The term of this lease shall be for five (5) years and zero (0) months, and shall commence on the 1st day of September, 2003, and end on the 31st day of August, 2008 inclusive.

* Or when construction is complete for this space.

RENT

4. Lessee covenants and agrees to pay the Lessor as rental for said Premises a minimum monthly rental of Months 1-60: \$4,150.00 per month plus triple net costs as defined in Section 28. 31

in lawful money of the United States in advance on the first day of each calendar month of the lease term, to Lessor at Ewing and Clark, Inc., 2110 Western Avenue, Seattle, WA 98121-2110.

or to such party or at such other place as the Lessor may hereafter designate. In the event percentage rent is payable hereunder

by the Lessee, it shall be paid in the manner and at the time as set forth in the rider attached hereto and by reference made a part of this lease.

CONSIDERATION

5. As partial consideration for the execution of this lease, the Lessee has this day paid the Lessor the sum of _____ Three Thousand and no/100 Dollars paid on previous lease dated 07/14/00 (\$ 3,000.00), the receipt of which is hereby acknowledged. If the Lessee shall have fully complied with all of the covenants, agreements, terms, and conditions of this lease, but not otherwise, said sum so paid shall be credited on the payment of the last month's minimum rental of the term of this lease.

REPAIRS

6. The Premises have been inspected and are accepted by Lessee in their present condition, and Lessee will at all times keep the Premises neat, clean and in a sanitary condition. Lessee will replace any glass of all windows and doors as may become cracked or broken. Except for reasonable wear and tear and damage by unavoidable casualty, Lessee will at all times preserve said Premises in as good repair as they now are or may hereafter be put to. All repairs shall be at Lessee's sole cost and expense, except outside walls, roof and foundation. Lessee agrees that at the expiration or sooner termination of this lease, Lessee will quit and surrender the said Premises without notice, and in a neat and clean condition, and will deliver up all keys belonging to said Premises to the Lessor or Lessor's agent.

UTILITIES

7. The Lessee hereby covenants and agrees to pay all charges for heat, light, garbage, water and sewer and for all other public utilities which shall be used in or charged against the leased Premises during the full term of this lease. Lessor shall not be liable for the failure of any such services for any reason whatsoever. In the event the leased Premises are a part of a building or larger Premises to which such charges are charged as a whole, with the consent of the Lessor, then Lessee agrees to pay, upon demand, a proper and fair share of said charges.

ACCIDENTS AND LIABILITY

8. All personal property on said leased Premises shall be at the risk of Lessee. Lessor or Lessor's agent shall not be liable for any damage, either to person or property, obtained by Lessee or others caused by any defects now in said Premises, or the building in which the Premises are located, or any service facilities, or hereafter occurring therein, or due to the building in which the leased Premises are situated, or any part of appurtenance thereof, becoming out of repair, or caused by fire or by the bursting or leaking of water, gas, sewer or steam pipes, or from any act or neglect of co-tenants or other occupants of said building, or any other persons, including Lessor or Lessor's agent or employees, or due to the happening of any accident from whatsoever cause in and about said building. Lessee agrees to defend and hold Lessor and Lessor's agent harmless from any and all claims for damages suffered or alleged to be suffered in or about the leased Premises by any person, firm or corporation. Lessee agrees to maintain insurance on the Premises in the minimum limit of \$1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage, and shall name Lessor as an additional insured. Lessee shall furnish Lessor a certificate indicating that the insurance policy is in full force and effect, that Lessor has been named as an additional insured, and that the policy may not be cancelled unless ten (10) days prior written notice of the proposed cancellation has been given to Lessor.

CARE OF PREMISES

9. The Lessor shall not be called upon to make any improvement or repair of any kind upon said Premises, and said Premises shall at all times be kept and used in accordance with the Laws of the State of Washington and ordinances of the City of Renton, and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper office of the City of Renton at the sole cost and expense of said Lessee; and Lessee will permit no waste, damage or injury to the Premises, and at Lessee's own cost and expense, will keep all drainage pipes free and open and will protect water, heating and other pipes so that they will not freeze or become clogged, and will repair all leaks and will also repair all damages caused by leaks or by reason of Lessee's failure to protect and kept free, open and unfrozen any of the pipes and plumbing on said Premises. Lessee shall be liable for the removal of ice and snow from the sidewalk in front of and about said Premises.

USE

10. The Lessee shall conduct and carry on in said Premises, continuously during each and every business day of the term hereof, the business for which said Premises are leased, and shall not use the Premises for illegal purposes. The Lessee agrees that no stock of goods will be carried, or anything done in or about the Premises which will increase the present rate of insurance, provided, however, if the Lessee shall engage in such business with the consent of the Lessor, which business shall increase insurance rates, Lessee shall pay such increase. Lessee agrees that it has determined to Lessee's satisfaction that the Premises can be used for the purposes for which they are leased and waives any right to

terminate this lease in the event the Premises cannot be used for such purposes or for any reason may not be used for such purposes during the term of the lease.

LIENS AND INSOLVENCY

11. Lessee shall keep the leased Premises and the property in which the leased Premises are situated, free from any liens arising out of any work performed, materials furnished or obligations incurred by the Lessee. In the event Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Lessee, then the Lessor may cancel this lease at Lessor's option.

ASSIGNMENT

12. Lessee shall not without the written consent to the Lessor or Lessor's agent, let or sublet the whole or any part thereof, nor assign this lease or any part thereof without the written consent of the Lessor, or Lessor's agent. This lease shall not be assignable by operation of law. If Lessee is a corporation, then any transfer of this lease from Lessee by merger, consolidation or liquidation and any change in the ownership of, or power to vote, the majority of its outstanding voting stock shall constitute an assignment for the purpose of this paragraph. If consent is once given by the Lessor to the assignment of this lease, or any interest therein, Lessor shall not be barred from afterwards refusing to consent to any further assignment.

ACCESS

13. Lessee will allow Lessor or Lessor's agent free access at all reasonable times to said Premises for the purpose of inspection or of making repairs, additions or alterations to the Premises or any property owned by or under the control of Lessor, but this right shall not be construed as an agreement on the part of the Lessor to make any repairs, all of such repairs to be made by the Lessee as aforesaid. The Lessor shall have the right to place and maintain "for lease" signs in a conspicuous place on the Premises for 90 days prior to the expiration of this lease.

POSSESSION

14. In the event of the inability of Lessor to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this lease, neither Lessor nor Lessor's agent shall be liable for any damage caused thereby, nor shall this lease thereby become void or voidable, nor shall the term herein specified be in any way extended, but in such event Lessee shall not be liable for any rent until such time as Lessor can deliver possession. If the Lessor shall deliver possession of the Premises to the Lessee prior to the commencement date of this lease, Lessee agrees to accept same at such time and both Lessor and Lessee agree to be bound by all of the provisions and obligations hereunder during such prior period, except that no rental shall be payable for such prior period.

DAMAGE OR DESTRUCTION

15. In the event the Premises are damaged to such an extent as to render the same untenable in whole or in a substantial part thereof, or are destroyed, it shall be optional with the Lessor to repair or rebuild the same; and after the happening of any such contingency, the Lessee shall give Lessor or Lessor's agent immediate written notice thereof. Lessor shall have not more than sixty (60) days after date of such notification to notify the Lessee in writing of Lessor's intentions to repair or rebuild said Premises, or the part damaged as aforesaid, and if Lessor elects to repair or rebuild said Premises, Lessor shall prosecute the work of such repairing or rebuilding without unnecessary delay, and during such period the rent of said Premises shall be abated in the same ratio that that portion of the Premises rendered for the time being unfit for occupancy shall bear to the whole of the leased Premises. If the Lessor shall fail to give the notice aforesaid, Lessee shall have the right to declare this lease terminated by written notice served upon the Lessor or Lessor's agent. In the event the building in which the Premises hereby leased are located shall be damaged (even though the Premises hereby leased shall not be damaged thereby) to such an extent that in the opinion of Lessor it shall not be practical to repair or rebuild, or is destroyed, then it shall be optional with Lessor to terminate this lease by written notice served on Lessee within sixty (60) days after such damage or destruction.

NOTICE

16. Any notice required to be served in accordance with the terms of this lease, shall be sent by mail, the notice from the Lessee to be sent to the Lessor or Lessor's agent, and the notice from the Lessor to be sent to Lessee at the leased Premises.

GOVERNMENTAL FEES

17. All fees relating to Lessee's tenancy, payable to the City, County or State during the term of this lease shall be paid by Lessee.

SIGNS

18. All signs or symbols placed in the windows or doors of the Premises or upon any exterior part of the building by the Lessee shall be subject to the approval of the Lessor or Lessor's agent. Any signs so placed on the Premises shall be so placed upon the understanding and agreement that the Lessee will remove same at the termination of the tenancy herein created and repair any damage or injury to the Premises caused thereby, and if not so removed by Lessee then Lessor may have same so removed at Lessee's expense.

ALTERATIONS

19. Lessee shall not make any alterations, additions or improvements to said Premises, without the prior written consent of Lessor in writing, and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense of Lessee, and shall become the property of the Lessor, and shall remain in and be surrendered with the Premises as a part thereof of the termination of this lease, without disturbance, molestation or injury. If the Lessee shall perform work with the consent of the Lessor, as aforesaid, Lessee agrees to comply with all the laws, ordinances, rules and regulations of the City of Renton or any other authorized public authority. The Lessee further agrees to save the Lessor free and harmless from damage, loss or expense arising out of said work. Lessee agrees that Lessor has the right to make alterations to the Premises and to the building in which the Premises are situated and Lessor shall not be liable for any damage which Lessee might suffer by reasons of such undertaking.

DEFAULT AND RE-ENTRY

20. If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default in any of the covenants and agreements herein contained, then the Lessor may cancel this lease upon giving the notice required by law, and re-enter said Premises, but notwithstanding such re-entry by the Lessor, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this lease and Lessee covenants and agrees to make good to the Lessor any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than herein agreed to. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Lessor.

COST AND ATTORNEY'S FEES

21. If by reason of any default on the part of the Lessee it becomes necessary for the Lessor to employ an attorney or in case Lessor shall bring suit to recover any rent due hereunder, or for breach of any provision of this lease or to recover possession of the leased Premises, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this lease and Lessor shall prevail in such action, then and in any of such events, Lessee shall pay Lessor reasonable attorneys' fees and all costs and expenses expended or incurred by the Lessor in connection with such default or action.

NON-WAIVER OF BREACH

22. The failure of the Lessor to insist upon strict performance of any of the covenants and agreements of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver of relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

REMOVAL OF PROPERTY

23. In the event of any entry in, or taking possession of, the leased Premises as aforesaid, the Lessor shall have the right, but not the obligation, to remove from the leased Premises all personal property located therein, and may store the same in any place selected by Lessor, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sales, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to Lessor under any of the terms hereof, the balance, if any, to be paid to Lessee.

HEIRS AND SUCCESSORS

24. Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this lease shall be binding upon the heirs, legal representatives, successors and assigns of any or all of the parties hereto.

HOLD-OVER

25. If the Lessee shall, with the written consent of Lessor, hold over after the expiration of the term of this lease, such tenancy shall be for an indefinite period of time on a month to month tenancy, which tenancy may be terminated as provided by the Laws of the State of Washington. During such tenancy Lessee agrees to pay to the Lessor the same rental rates as set forth herein, unless a different rate is agreed upon, and to be bound by all of the terms, covenants, and conditions as herein specified, so far as applicable.

SUBORDINATION

26. This lease is subject and is hereby subordinated to all present and further mortgages; deeds of trust and other encumbrances affecting the demised Premises or the property of which said Premises are a part. The Lessee agrees to execute, at no expense to the Lessor, any instrument which may be deemed necessary or desirable by the Lessor to further effect the subordination of this lease to any mortgage, deed of trust or encumbrances.

COMMON AREAS

27. If the Premises are part of a building occupied by other tenants, Lessee agrees to conform to Lessor's rules and regulations pertaining to the parts of the building that are in common use by tenants.

CONDEMNATION

28. In the event a substantial part of the Premises is taken by the right of eminent domain, or purchased by the condemnation, in lieu thereof, so as to render the remaining Premises untenable, then this lease shall be canceled as of the time of taking at the option of either party. In the event of a partial taking which does not render the Premises untenable, the rent shall be reduced in direct proportion to the taking. Lessee shall have no claim to any portion of the compensation for the taking of the land or buildings.

TAXES

29. In addition to the rent provided in paragraph 4, Lessee agrees to pay any portion of the real estate taxes and assessments applicable to the Premises which are due and payable during the term of this Lease or any extension hereof. Lessee shall pay its portion of the taxes on the building equal to the percentage of the total net rentable area in the building leased to Lessee, plus the portion of the taxes applicable to the land, which is equal to the ratio of the square feet of the Premises to the total square feet of net rentable area of buildings on said land. Lessor shall submit to Lessee a copy of the actual statements received from the taxing authority as they become due and shall invoice Lessee for its portion according to the provisions of this paragraph. Lessee shall pay such invoice within fifteen (15) days. If the term of this lease commences and terminates on dates other than January 1 and December 31, respective, taxes payable shall be prorated in the first and last calendar years of the term of the lease. Should there presently be in effect or should there be enacted during the term of this lease any law, statute or ordinance levying any tax (other than Federal or State income taxes) upon rents, Lessee shall pay such tax or shall reimburse Lessor on demand for any such taxes paid by Lessor.

SUBROGATION WAIVER

30. Lessor and Lessee each herewith and hereby releases and relieves the other and waives its entire right of recovery against the other for loss or damage arising out of or incident to the perils described in standard fire insurance policies and all perils described in the "Extended Coverage" insurance endorsement approved for use in the state where the Premises are located, which occurs in, on, or about the Premises, whether due to the negligence of either party, their agents, employees or otherwise.

SURRENDER OF PREMISES

31. Lessee agrees, upon termination of this lease, to peacefully quit and surrender the Premises without notice, leave the Premises neat and clean and to deliver all keys to the Premises to Lessor.

ESTOPPEL CERTIFICATE

32. (a) Lessee shall at any time upon not less than ten (10) days prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing certifying that this lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed. Any such statements may be conclusively relied upon by a prospective purchaser or encumbrance of the Premises. (b) If Lessor desires to finance or refinance said Premises, or any part thereof, Lessee hereby agrees to deliver to any lender designated by Lessor such financial statements of Lessee as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Lessee. All such financial statements shall be received by Lessor in confidence and shall be used only for the purposes herein set forth.

LATE CHARGES

33. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this lease. Accordingly, if any installment of the rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within five (5) days after such amount shall be due, Lessee shall pay to Lessor a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by

Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

PROPERTY INSURANCE

34. Lessor shall, at Lessee's expense, procure and maintain at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises in the amount of the full replacement value thereof (exclusive of Lessee's trade fixtures and personal property) providing protection against all perils included within the classification of fire, extended coverage, vandalism, and malicious mischief, sprinkler leakage and special extended peril (all-risk). Lessee shall pay such annual insurance premiums to Lessor within fifteen (15) days after receipt by Lessee of a copy of the premium statement or other reasonably satisfactory evidence of the amount due, which shall include the method of calculation of Lessee's share thereof if the insurance covers other improvements than the Premises. Such insurance shall provide for payment of loss thereunder to Lessor or the holder of a first mortgage or deed of trust on the Premises.

COMMISSION

35. Lessor agrees to pay Ewing & Clark, Inc. upon the execution of this lease by both Lessor and Lessee, a commission for negotiating this lease as follows:

N/A

RIDERS

36. The riders, if any, attached hereto, are made a part of this lease by reference.

TRIPLE COSTS - see Attachment A.

37. Yearly summary costs will be provided as a base of payment for the sixty-eight percent (68%) triple net costs to be paid in monthly payments. Triple net costs include: property taxes, insurance and utilities at a sixty-eight percent (68%) ratio of the total.

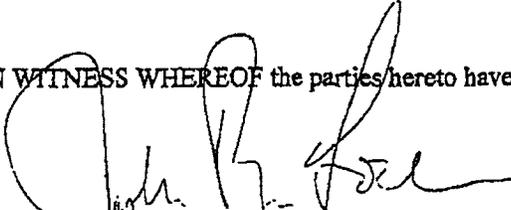
OPTION TO RENEW

38. Provided Lessee is not in default, Lessor further grants to Lessee the right and privilege of extending this Lease for one (1) additional term of five (5) years at a rent to be negotiated. Lessee agrees to notify Lessor in writing as to their decision to exercise this option to renew at least sixty (60) days prior to expiration of Lease.

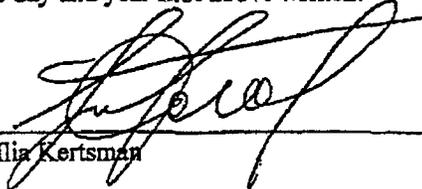
LANDLORD IMPROVEMENTS

39. Landlord agrees to repair leak in roof and repair sinking driveway by the end of 2004. Additionally, Landlord agrees to pay \$6,000 towards installation of an air conditioning system and new office carpet. Tenant agrees to pay the remaining balance towards the installation of an air conditioning system and new office carpet.

IN WITNESS WHEREOF the parties hereto have executed this lease the day and year first above written.



LESSOR, J. Brian Losh



LESSEE, Iia Kertsman

Address 2110 Western Avenue
Seattle, WA 98121

Address 16325 N.E. 44th Ct
Redmond, WA 98052

Phone (206) 441-7900

Phone (425) 793-4006

Attachment A

2003 Costs

Electric	\$ 2,735.64	68.0%	\$ 1,860.24
Water	\$ 1,787.58	68.0%	\$ 1,215.55
Sewer	\$ 1,895.78	68.0%	\$ 1,289.13
Garbage	\$ 2,365.33	68.0%	\$ 1,608.42
Insurance	\$ 2,324.60	68.0%	\$ 1,580.73
Taxes	\$ 6,811.29	68.0%	\$ 4,631.68
Totals	\$ 17,920.22	68.0%	\$ 12,185.75

\$12,185.75 / 12 months = ██████████

APPENDIX II

ASSIGNMENT OF LEASE

This Assignment of Lease made this _____ day of December, 2005 between Ilia Kertsman dba Baza International, LLC, Lessee, and William and Teresa Grover as individuals, dba Grover International, LLC as Assignee.

WITNESSETH

WHEREAS, J. Brian Losh as Lessor, and Ilia Kertsman dba Baza International, LLC as Lessee, entered into a commercial lease agreement for approximately 10,000 sf at 329 Wells Avenue Renton, Washington, a copy of which lease has been marked Exhibit A and attached hereto and made a part hereof as though set forth at length herein.

WHEREAS, William and Teresa Grover as individuals, dba Grover International, LLC has agreed to accept the benefits and burdens of the Lessee interest of Ilia Kertsman dba Baza International, LLC, and

WHEREAS, John Brian Losh as agent for J. Brian Losh, as Lessor, has agreed to approve said assignment and to accept William and Teresa Grover as individuals, dba Grover International, LLC as Lessee in the place of Ilia Kertsman dba Baza International, LLC

NOW, THEREFORE, For Value Received It Is Agreed As Follows:

1. Ilia Kertsman dba Baza International, LLC hereby assign to William and Teresa Grover as individuals, dba Grover International, LLC its Lessee's interest in the attached commercial lease agreement. Ilia Kertsman dba Baza International, LLC will be secondarily liable for the completion of the terms and conditions of the assigned lease.

2. William and Teresa Grover as individuals, dba Grover International, LLC accepts such assignment and agrees to perform all of the duties and obligations of Lessee under the aforesaid lease agreement and to perform all obligations of Ilia Kertsman dba Baza International, LLC as Lessee.

3. This Assignment of Lease shall be effective as of December, 2005

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the date set forth below.

ASSIGNEE: Grover International, LLC Date: 12/12/05

by William G. Grover member
ASSIGNOR: Baza Intl LLC Date: 12/12/05

by Ilia Kertsman member
LESSOR: J. Brian Losh Date: _____

DECLARATION OF SERVICE

I, Ellen Krachunis, state:

On this day I caused to be delivered by ABC Legal Messengers for delivery on July 6, 2009, to the Court of Appeals Division I and to

Charles Wright
Davis Wright Tremaine LLP
Suite 2200 - 1201 Third Avenue
Seattle, WA 98101

JEFFREY P. DOWNER
MICHELLE CORSI
LEE SMART P.S., INC.
1800 ONE CONVENTION PLACE
701 PIKE STREET
SEATTLE, WA 98101-3929

Brief of Appellants.

Declarant is a resident of the State of Washington and over the age of eighteen (18) years. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 6th day of July, 2009 at Seattle, Washington.


Ellen Krachunis

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2009 JUL -6 PM 4:34