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Court of Appeals  
Division II  
State of Washington  
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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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CCT CONSTRUCTION INC. and CRAIG SHIPMAN,

Respondents,

v.

4EVER HEALING LLC and SARANJIT BASSI,

Appellants.

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BRIEF OF RESPONDENT

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
COUNTER STATEMENT OF THE ISSUES.....	3
COUNTER STATEMENT OF THE CASE.....	4
ARGUMENT.....	4
A. Standard of Review.....	4
B. 4Ever Healing and Bassi’s breach of the Lease Agreement is a Verity on Appeal.....	5
C. The Trial Court’s Finding of Facts and Conclusions of Law are supported by substantial evidence and consistent with Washington Law.....	6
1. The trial court accounted for the landlord’s failure to vacate Unit A after 4Ever took possession of the primary location, Unit B, for his business.....	7
2. 4Ever and Bassi had actual, timely notice to pay or vacate.....	8
3. CCT did not deprive 4Ever Healing and Bassi of access to the premises.....	10
4. The trial court properly awarded and assessed damages to CCT.....	11
5. The lease required that all alterations and improvements to the premises would remain on the premises.....	13
D. The Trial Court Properly Awarded Attorneys’ Fees and Costs to CCT.....	14
E. CCT is Entitled to Fees on Appeal Pursuant to RAP 18.1.....	15
CONCLUSION.....	15

**APPENDIX.....17**

- 1. Findings of Fact and Conclusions of Law Following Bench Trial**
- 2. Trial Exhibit 13 – 3-Day Notice to Pay Rent or Vacate**
- 3. Trial Exhibit 21 – Text messages between Bassi and CCT September 22, 2016**

## TABLE OF AUTHORITIES

<b>CASES</b>	<b>Page Nos.</b>
<i>Aldrich v. Olson</i> , 12 Wn. App. 665, 667, 531 P.2d 825 (1975).....	11
<i>Allied Stores Corp. v. N. W. Bank</i> , 2 Wn. App. 778, 782, 469 P.2d 993 (1970).....	13, 14
<i>Erickson v. Elliott</i> , 177 Wash. 229, 232, 31 P.2d 506, 507 (1934).....	9
<i>Gray v. Pierce County Hous. Auth.</i> , 123 Wn. App. 744, 757, 97 P.3d 26 (2004).....	11
<i>Hargis v. Mel-Mad Corp.</i> , 46 Wash. App. 146, 151, 730 P.2d 76 (1986).....	12
<i>Merriman v. Cokeley</i> , 168 Wn.2d 627, 631, 230 P.3d 162 (2010).....	5
<i>Metro. Nat’l Bank of Seattle v. Hutchinson Realty Co.</i> , 157 Wash. 522, 529, 289 P. 56, 58-59 (1930).....	12
<i>Nguyen v. City of Seattle</i> , 179 Wn. App. 155, 163, 317 P.3d 518 (2014).....	5
<i>Noble v. Safe Harbor Family Pres. Trust</i> , 167 Wn.2d 11, 17, 216 P.3d 1007 (2009).....	14
<i>Old City Hall LLC v. Pierce County AIDS Found.</i> , 181 Wn. App. 1, 8, 329 P.3d 83 (2014).....	9
<i>Pierce County v. State</i> , 144 Wn. App. 783, 847, 185 P.3d 594 (2008).....	5
<i>Robel v. Roundup Corp.</i> , 148 Wn.2d at 47	11
<b>RULES</b>	
Rap 18.1.....	15

## INTRODUCTION

Appellant, 4Ever Healing LLC (“4Ever Healing”), is appealing certain Findings of Fact and Conclusions of Law and the Judgment entered in Pierce County Superior Court Cause No. 16-2-12861-6 on May 22, 2018, by the Honorable Judge Murphy. The trial court awarded damages to the Respondent, CCT Construction, Inc. (“CCT”), arising from 4Ever Healing’s breach of a commercial lease between CCT as Lessor and 4Ever Healing as Lessee (“Lease”) regarding real property and improvements located at 22308 State Route 410 East, Units A and B, Bonney Lake, Pierce County, Washington (“Premises”).

4Ever Healing leased the Premises for the purpose of opening a marijuana retail store. At the time the Lease was signed 4Ever Healing and its Managing Member, Saranjit Bassi (“Bassi”) knew that the City of Bonney Lake prohibited retail marijuana businesses. CP Ex 2. Bassi signed the Lease and a personal guaranty with full knowledge of the risk that Bonney Lake may not allow him to open a retail marijuana store. This risk was worth taking because the Washington State Liquor and Cannabis Board (“LCB”) required 4Ever Healing to have an actual physical location as a condition of the State’s final approval of 4Ever Healing’s retail marijuana license. CP Ex 5 (LCB letter to defendant regarding status).

4Ever Healing was ultimately successful in obtaining that state license after making alterations and improvements to the Premises. 4Ever Healing completed work on the alterations and improvements to Unit B on the Premises in late August 2016 and received approval of the Premises for use as a retail marijuana store from the LCB. However, Bonney Lake maintained its moratorium on marijuana retail stores and 4Ever Healing failed to obtain Bonney Lake's approval to operate a retail marijuana store. Bonney Lake posted a Stop Work Order on the Premises in late August because Bassi and 4Ever Healing had not applied for permits required by the City of Bonney Lake. CP Ex 24.

Once 4Ever Healing learned that it would not receive approval, it immediately stopped paying rent to CCT. Bassi admits receiving the 3 Day Notice to Pay Rent or Vacate ("Notice") in September 2016 and that his attorney also received a copy of the Notice. RP 197; CP Ex 16, page 67 of 72 (text messages from Bassi to Shipman, September 26, 2016). After receiving the Notice Bassi caused 4EverHealing to vacate the premises and moved the business to a cheaper location, where it continues its efforts to obtain City approval to operate a retail marijuana store. CP Ex 16, page 67-68 of 72 (text messages from Bassi to Shipman, September 26, 2016)

The trial court properly enforced the terms of the Commercial Lease and Bassi's unconditional guaranty of that lease, as required by Washington

law. 4Ever Healing and Bassi do not challenge the trial court's findings that 4Ever Healing clearly breached the lease and that Bassi, as guarantor, is individually responsible for that breach. Nor do they take issue with most of the findings of fact. Instead, they challenge the trial court's conclusions of law. Their challenges must fail because those conclusions are supported by the unchallenged findings, and consistent with the Lease and Washington law. The Court should affirm the trial court Decision.

### **COUNTER STATEMENT OF ISSUES**

- A.** Was the trial court's conclusion of law to credit 4Ever Healing with the lost rental income resulting from CCT's failure to vacate the house identified as Unit A in the Lease supported by the unchallenged findings of fact and consistent with Washington law?
- B.** Was the trial court's finding of fact that CCT posted a 3-Day Notice to Pay Rent or Vacate and as result of the posting 4Ever Healing vacated the Premises supported by substantial evidence?
- C.** Was the trial court's finding of fact that CCT did not deprive 4Ever Healing of access to the premises supported by substantial evidence?
- D.** Was the trial court's damage award supported by the unchallenged findings of fact and consistent with Washington law?

E. Was the trial court's conclusion of law that improvements to the Premises by 4Ever Healing were fixtures supported by unchallenged findings of fact and consistent with Washington law?

F. Did the trial court properly award attorneys' fees and costs as authorized in the Lease to CCT?

### **COUNTER STATEMENT OF THE CASE**

CCT adopts the trial court's Findings of Fact, CP 68 – 78.<sup>1</sup> In addition, CCT incorporates the trial Exhibits identified in the Clerk's Papers including, without limitation, the admissions by Bassi that he and his lawyer received the Notice and that Bassi moved out because of the Notice. RP 197; CP Ex 13; and CP Ex 21, page 19 of 40 (text messages from Bassi to Shipman September 22, 2016)

### **ARGUMENT**

#### **A. Standard of Review.**

4Ever Healing and Bassi assigned error to eleven of nineteen of the trial court's conclusions of law, but challenged only two of the trial court's twenty-eight findings of fact. Br. of Appellant at 1-2. Unchallenged findings are verities on appeal. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 43, 59 P.3d 611 (2002). Review of the challenged findings of fact is limited to

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<sup>1</sup> Findings of Fact and Conclusions of Law are attached hereto as Appendix 1.

a determination of whether substantial evidence supports the trial court's findings of fact, and whether, in turn, those findings support the conclusions of law and judgment. *Pierce County v. State*, 144 Wn. App. 783, 847, 185 P.3d 594 (2008). Evidence is substantial if it is sufficient to persuade a fair-minded, rational person of the declared premise. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). A reviewing court may not disturb findings of fact supported by substantial evidence even if there is conflicting evidence. *Id.*

An unchallenged conclusion of law becomes the law of the case. *Nguyen v. City of Seattle*, 179 Wn. App. 155, 163, 317 P.3d 518 (2014). Challenges to conclusions of law are reviewed de novo. *Id.* But when an appellant challenges conclusions of law not based on the law itself, but rather claiming that the findings do not support the court's conclusions, appellate review is limited to determining whether the trial court's findings are supported by substantial evidence and, if so, whether those findings support the conclusions of law. *Id.*

**B. 4Ever Healing and Bassi's Breach of the Lease Agreement is a Verity on Appeal.**

The trial court found that 4Ever Healing "clearly breached" the lease by failing to pay rent for September, 2016, in the amount of \$6,000.00. CP

711 (Finding of Fact No. 14). 4Ever Healing does not challenge that finding.

The trial court also found that Bassi unconditionally guaranteed 4Ever Healing's payment and performance of its obligations under the lease. CP 69 (Finding of Fact No. 2). Bassi does not challenge that finding, either.

4Ever Healing and Bassi's breach of the lease is therefore a verity on appeal.<sup>2</sup>

**C. The Trial Court's Finding of Facts and Conclusions of Law Are Supported by Substantial Evidence and Consistent with Washington Law.**

4Ever Healing and Bassi assign error to only two findings of fact, Number 15 (regarding the Three Day Notice to Pay or Vacate), and Number 16 (regarding 4Ever and Bassi's access to the premises). While 4Ever and Bassi take no issue with almost all of the trial court's findings of fact, they assign error to eleven Conclusions of Law, specifically Nos. 2, 3, 5, 6, 8, 9, 10, 11, 13, 14 and 16. However, these two challenged Findings of Fact are

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<sup>2</sup> The trial court found that, upon receiving notice to pay or vacate, 4Ever chose to vacate. CP 711 (Finding of Fact 15). 4Ever Healing and Bassi contend that this did not establish abandonment in breach of the lease, and thus, CCT's supposed breach by inadequate notice and blocking "access" is not excused. This is beside the point. The trial court found that they clearly breached the lease by failing to pay rent. Whether they committed a further breach by vacating the premises is not relevant on appeal, and does not change the trial court's determination of breach and assessment of damages.

supported by substantial evidence in the record, and the challenged Conclusions of Law flow from the unchallenged Findings of Fact and are consistent with Washington law.

As noted above, 4Ever and Bassi's breach of the lease is not challenged, and thus, established on appeal. They devote much of their brief to arguing that CCT breached the lease, such that their own breach is excused, and thus, the trial court erred in awarding damages to CCT. None of these arguments have merit.

**1. The trial court accounted for the landlord's failure to vacate Unit A after 4Ever took possession of the primary location, Unit B, for his business.**

The Lease provided for rental of Unit A, a house, and Unit B, a shop. CP Ex 1. The parties agreed in the lease that CCT would continue to use Unit A as a residence for sixty days after commencement of the lease on June 1, 2016. CP 69 (Finding of Fact No. 3). The owner of CCT, Mr. Shipman, failed to vacate Unit A by August 1, 2016. CP 72 (Finding of Fact No. 21). The trial court found that 4Ever lost rental income from Unit A in the amount of \$3,400.00 per month for August and September 2016. *Id.*

4Ever and Bassi do not challenge these findings. Instead, they challenge the trial court's Conclusions of Law Nos. 2, 11, 13, and 14, that CCT was entitled to rent and additional rent. They claim that the trial court

erred in reaching these conclusions because CCT's failure to vacate on August 1, 2016 was a material breach, excusing their own breach. However, there is no evidence that they gave notice of breach to CCT, or demanded that Mr. Shipmen move out of Unit A.<sup>3</sup> They only raised this issue upon CCT filing of this action for breach of contract. The Lease does not allow them to assert breach without prior notice. CP Ex 1 (Commercial Lease). The trial court properly accounted for the lost rental income.

**2. 4Ever and Bassi had actual, timely notice to pay or vacate.**

4Ever and Bassi also contend that CCT materially breached the lease by posting the 3-Day Notice to Pay or Vacate on the shop door of Unit B, rather than sending it by certified mail. Thus, they argue, the trial court erred in finding that CCT posted the 3-Day Notice and in finding that as a result, 4Ever Healing vacated the premises without paying rent. CP 71 (Finding of Fact No. 15). They do not challenge any conclusion of law.

The trial court's finding is supported by substantial evidence. Bassi admitted at trial that he had actual notice, because he saw the 3-Day Notice to Pay or Vacate posted on the door of the premises on the day it was posted. RP 197. He understood that this notice was to pay \$13,100.00 for the

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<sup>3</sup> Indeed, Mr. Shipman testified that that the parties verbally agreed that, in consideration for CCT remaining on the premises after August 1, 2016, CCT would forgive 4Ever's June and July rent deferrals, each in the amount of \$2,500, for additional consideration of \$5,000. RP at 34.

months of June, July August and September or evacuate the premises. *Id.* That same day, he vacated the premises. *Id.* Unchallenged findings of fact also support this finding. 4Ever Healing did not pay the base monthly rent CP 71 (Finding No. 14), or the additional rent for unpaid taxes CP 73 (Finding No. 25). Bassi also admitted that a copy of the Notice was sent to his attorney. RP 197; CP Ex 13; and CP 21 page 19 of 40 (text messages from Bassi to Shipman September 22, 2016)

4Ever and Bassi, however attempt to conflate this minor deviation in notice form into a “constructive eviction” excusing their obligation to pay rent. There is no evidence, at all, of constructive eviction. A constructive eviction takes place if the landlord does any wrongful act or is guilty of any neglect or default whereby the premises are rendered unsafe, unfit, or unsuitable for occupancy for the purpose for which they were leased. *Erickson v. Elliott*, 177 Wash. 229, 232, 31 P.2d 506, 507 (1934). A constructive eviction prospectively releases the tenant from the obligation to pay rent, so long as the tenant abandons the leasehold in response to the constructive eviction. *Old City Hall LLC v. Pierce County AIDS Found.*, 181 Wn. App. 1, 8, 329 P.3d 83 (2014) (landlord constructively evicted tenants by neglecting building, causing it to be unsanitary, unbearable, unworkable, and unsafe).

Here, 4Ever Healing did not abandon the leasehold in response to any unsanitary or unsafe condition. It chose to vacate, rather than pay past due rent, upon receive the 3-Day Notice to Pay or Vacate.

**3. CCT did not deprive 4Ever Healing and Bassi of access to the Premises.**

4Ever and Bassi contend that CCT breached the lease by blocking their access to the premises. They therefore assign error to Finding of Fact No. 16, wherein the trial court found that although Mr. Shipman positioned vehicles on September 18, 2016, so that items could not be removed from the shop, 4Ever Healing and Bassi's access to the shop was not denied, and they were only prevented from moving an outside air conditioning unit. CP FOF 16

This finding is supported by both substantial evidence and the unchallenged findings of fact. At trial, Mr. Bassi testified that he removed everything from the shop, the day he received notice, except for structural items such as drywall and vents. RP 198. He was "unable to grab" an outside air conditioning unit. RP 199. When he came back, Mr. Shipman's vehicle blocked him from removing this outside unit. RP 204. Appellants also do not challenge Finding of Fact No. 24, regarding 4Ever and Bassi's removal of cabinets and monitors from the premises.

4Ever and Bassi insist that this “self-help” forfeits CCT’s right to receive rent, citing *Aldrich v. Olson*, 12 Wn. App. 665, 667, 531 P.2d 825 (1975) and *Gray v. Pierce County Hous. Auth.*, 123 Wn. App. 744, 757, 97 P.3d 26 (2004). These cases are distinguishable because in both, the landlord locked out residential tenants. 4Ever and Bassi were not “locked out” of the commercial premises, or otherwise unable to access the premises. They removed their personal property, as well took fixtures that, under the lease, should have remained on the premises. *See* Br. of Appellants at 6. They were only unable to remove an *outside* air conditioning unit. The trial court’s finding of fact is supported by substantial evidence, and should be affirmed.

**4. The trial court properly awarded and assessed damages to CCT.**

The trial court awarded CCT damages totaling \$56,500. CP 74 (Conclusion of Law 13). This damage award is based on unchallenged CP 69-73 (Finding of Facts 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 24 and 25). Because no error was assigned to these findings, this Court accepts them on review as verities and forgoes any reweighing of the evidence supporting them. *Robel v. Roundup Corp.*, 148 Wn.2d at 47. 4Ever and Bassi – having failed to challenge these findings – cannot now argue that

there is “no factual or legal basis” to the trial court’s award. Brief of Appellants at 17.

4Ever and Bassi point out that Washington law mandates mitigation, and therefore, the trial court erred by awarding CCT damages for the entire Lease term. Although the general rule is that when a lease is surrendered or terminated, all liability for rent ends, there are exceptions to the rule, including cases where the lease expressly saves the lessor’s right to recover damages for the unaccrued rent. *Hargis v. Mel-Mad Corp.*, 46 Wash. App. 146, 151-152, 730 P.2d 76 (1986). The Lease in the present case expressly saves CCT’s right to claim damages for the unaccrued rent in Paragraph 17 of the Lease. When the lease expressly reserves the lessor’s right to also recover damages based on unaccrued rent, the lessee is not released from liability. *Id.* See also *Metropolitan Nat’l Bank of Seattle v. Hutchinson Realty Co.*, 157 Wash. 522, 529, 289 P. 56 (1930); *see also Hargis*, 46 Wn. App. at 152, citing *Metro. Nat’t Bank of Seattle*, 157 Wash. at 58-59.

The trial court’s conclusion of law regarding damages, including holding 4Ever Healing liable for the rent for the entire term of the Lease, is consistent with Washington law. The trial court’s damage award should be affirmed.

**5. The lease required that all alterations and improvements to the Premises would remain on the Premises.**

As Appellants acknowledge, the Lease provided that any alterations, additions or improvement to the Premises would become part of the Premises, and would remain in and be surrendered with the Premises as part of termination of the Lease. Brief of Appellants at 19; CP 70 (Finding of Fact No. 8). The trial court's unchallenged Finding of Fact No. 23 states the finding that cabinets, television monitors, and an outside air conditioning unit were affixed or attached to the building, and thus, all fixtures that must remain in the shop. CP 72. Unchallenged Finding of Fact No. 24 states that the value of the cabinets and monitors removed by 4Ever Healing was \$6,700.00. CP 72-73. These findings support Conclusion of Law No. 10, that the show case cabinets, television monitors and air conditioning units purchased by the tenant became fixtures under the terms of the lease. CP 74.

4Ever Healing and Bassi argue they did not intend the cabinets, monitor and air condition units to become fixtures. This is irrelevant. They agreed to the terms in the Lease that provides that "alterations, additions, and improvements" would become part of the Premises upon termination. A fixture is by definition an improvement to real property, but an improvement to real property need not be a fixture. *Allied Stores Corp. v.*

*N. W. Bank*, 2 Wn. App. 778, 782, 469 P.2d 993 (1970). Leases are contracts, as well as conveyances, and as such are to be given effect so as to carry out the intentions of the parties as manifested by the words used. *Id.*, 2 at 783. That these additions were affixed to the building is a verity on appeal, and directly supports the trial court's conclusion of law. The trial court properly assessed the value of the removed fixtures in the unchallenged Finding of Fact No. 24 and included that value in the damages award to CCT.

**D. The Trial Court Properly Awarded Attorneys' Fees and Costs to CCT.**

An attorney fee award made pursuant to a contract may be reversed only if the trial court manifestly abused its discretion. *Noble v. Safe Harbor Family Pres. Trust*, 167 Wn.2d 11, 17, 216 P.3d 1007 (2009). A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons only if its decision is manifestly unreasonable or based on untenable grounds. *Id.*

The trial court found that 4Ever Healing clearly breached the Lease. As Appellants acknowledge, the lease provides that CCT is entitled to recover reasonable attorneys' fees and all costs and expenses if it prevails in a dispute with 4Ever Healing. Brief of Appellants at 22. The trial court's award was proper, and should be affirmed.

Appellants do not dispute this. Instead, they point out that this provision is bilateral, and if they prove their own claims and successfully defend against CCT's claims, they, too, are entitled to such fees and costs. This is academic: the record is set; Appellants did not challenge all but two of the Findings of Fact; and there is nothing left to prove.

**E. CCT is Entitled to Fees on Appeal Pursuant RAP 18.1.**

Pursuant to RAP 18.1, CCT requests an award of attorney fees and costs incurred in this appeal. The Lease expressly provides for award of fees and costs incurred in enforcing the Lease provisions, CP (Exhibit 1, Section 18). Section 18 of the Lease provides for attorneys' fees. CP, Ex 1 (Commercial Lease, Section 18). CCT requests an award of fees and costs on appeal, pursuant to RAP 18.1.

**V. CONCLUSION**

4Ever Healing and Bassi disagree with the trial court's decisions. They may think that the damage award was somehow unfair or harsh. However, the Court enforced the lease agreement that 4Ever Healing made, and Bassi unconditionally guaranteed. It heard the testimony of witnesses and reviewed Exs, including photos, the Lease, and documents. Its findings are supported by substantial evidence. Those findings support the conclusions of law, which are consistent with Washington law. The trial

court should be affirmed, and CCT should be awarded its fees and costs incurred on appeal.

Respectfully submitted this 22nd day of March 2019.

/s/ Stephen A. Burnham  
Stephen A. Burnham WSBA #13270  
Of Campbell Barnett PLLC  
Attorney for Respondent

## **APPENDIX 1**

1. Findings of Fact and Conclusions of Law Following Bench Trial
2. Trial Exhibit 13 – 3-Day Notice to Pay Rent or Vacate
3. Trial Exhibit 21 – Text messages between Bassi and CCT September 22, 2016



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**IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

CCT CONSTRUCTION INC, a Washington Corporation,

Plaintiff,

vs.

4EVER HEALING LLC, a Washington Limited Liability Company, dba FORBIDDEN CANNABIS CLUB, and SARANJIT BASSI, individually,

Defendants.

Cause No: 16-2-12861-6

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING BENCH TRIAL**

SARANJIT BASSI, individually,

Third Party Plaintiff,

vs.

CRAIG SHIPMAN,

Third Party Defendant.

**I. INTRODUCTION**

This matter was tried to the Court on January 29-30, 2018. The undersigned judge presided at the trial. The claims presented at trial for adjudication were as follows:

1. Whether the Defendants are liable to the Plaintiff for breach of a written commercial lease agreement signed by Defendant Saranjit Bassi on behalf of 4Ever Healing LLC (4Ever Healing) on June 7, 2016, and by Craig Shipman on behalf of Plaintiff, CCT Construction, Inc.

1 (CCT) on June 8, 2016 ("Lease"). Mr. Bassi also signed a written guaranty of the Lease on  
2 June 7, 2016 ("Guaranty").

3 2. Whether the Plaintiff as a Counterclaim Defendant is liable to the Defendant, 4Ever  
4 Healing, for breach of the Lease by failing to deliver possession of the leased premises by  
5 August 1, 2016.

6 3. Whether the Plaintiff, as a Counterclaim Defendant, is liable for theft and conversion  
7 based on the Defendants' allegation that CCT willfully interfered, without lawful justification, with  
8 the Defendants' possession of their personal property.

9 4. Whether Plaintiff, as a Counterclaim Defendant, is liable to 4Ever Healing based on  
10 allegations that Plaintiff forcibly entered the leased premises in violation of RCW 59.12.

11 5. Whether Plaintiff knowingly interfered with 4Ever Healing's business expectancies for  
12 an improper purpose of by improper means resulting in damages to 4Ever Healing for tortious  
13 interference with the business expectancy.

14 6. Whether Defendants or Plaintiff are liable, one to the other, on claims regarding an  
15 alleged \$6,000.00 loan.

## 16 **II. EVIDENCE PRESENTED**

17 Plaintiff, CCT Construction, Inc., appeared through its President, Craig Shipman. In  
18 addition, the Plaintiff presented evidence through Tiffany Wells, an employee of CCT. The  
19 Defendant, 4Ever Healing, LLC, appeared through its Manager, Saranjit Bassi. In addition,  
20 Defendants presented testimony from Andrew DeCaro, Aundrea Brown, and Dylan Pierce. The  
21 parties also entered exhibits including copies of the Lease, Guaranty, CCT bank records, receipts  
22 and photos of the leased premises.

## 23 **III. FINDINGS OF FACT**

24 Based on the evidence presented at trial, the Court makes the following Findings of Fact:

25 1. The parties, CCT Construction, Inc. and 4Ever Healing LLC, dba Forbidden Cannabis  
Club, entered into a written commercial lease (Exhibit 1) ("Lease") that was signed by Defendant  
Saranjit Bassi on behalf of 4Ever Healing on June 7, 2016, and by Craig Shipman on behalf of  
CCT on June 8, 2016.

2. Saranjit Bassi, in his individual capacity, also signed a guaranty of the lease on June 7,  
2016, (also Exhibit 1) ("Guaranty"). The Guaranty was "an absolute and unconditional guaranty  
of payment and performance of 4Ever Healings obligations under the Lease".

3. The Lease granted 4Ever Healing use of certain real property located at 22308 State

1 Route 410 East, Units A and B, Bonney Lake, Pierce County, Washington as a marijuana retail  
2 store, a hookah lounge, and rental property.

3 4. The premises were to be used for the purpose of a marijuana retail store and for no  
4 other purpose without the written consent of CCT. The Lease stated a term of sixty (60) months  
5 commencing on June 1, 2016, and continuing through May 31, 2021, with monthly base rent in  
6 the amount of \$8,500.00 being due and payable in advance on the first day of each month during  
7 the term of the Lease.

8 5. The parties agreed CCT would continue to use Unit A (the house) for sixty (60) days  
9 after commencement of the Lease and CCT was to give written notice to the lessee after CCT  
10 had vacated Unit A.

11 6. 4Ever Healing agreed to pay CCT a relocation fee of \$15,000.00 in consideration for  
12 CCT moving out of the premises and into another location by August 1, 2016.

13 7. Notices regarding the performance of the parties under the Lease were required to be  
14 served in accordance with the terms of the Lease including certified mail. Notice was to be  
15 effective two business days after mailing and was to be mailed to 4Ever Healing at the Premises  
16 address and to their attorney.

17 8. The terms of the Lease provided that 4Ever Healing was not to make any alterations,  
18 additions or improvements to the Premises without the consent of CCT in writing. All alterations,  
19 additions or improvements were to be made at the sole cost of 4Ever Healing and would become  
20 part of the Premises and would remain in and be surrendered with the Premises as part of the  
21 termination of the Lease.

22 9. The Lease provided that, in the event 4Ever Healing performed any work on the premises,  
23 such work would comply with all laws, ordinances, rules and regulations of any authorized  
24 public authority.

25 10. The Lease provided that, in the event that rents remained unpaid when they became due  
or if 4Ever Healing violated or defaulted in any of the agreements contained in the Lease, CCT  
could cancel the Lease upon giving notice required by law and reenter the Premises.

11. The Lease further provided that 4Ever Healing's liability for rent would not be  
extinguished by CCT's reentry of the Premises and that such rent would continue to be due for  
the balance of the term of the Lease.

12. 4Ever Healing paid rent for June, July, and August of 2016 in the amount of \$6,000.00 for  
each month. The amount of monthly rent for the property was \$8,500.00, but the parties agreed

1 to waive \$2,500.00 of that rent each month until 4Ever Healing was open and generating  
2 revenue at the Premises.

3 13. 4Ever Healing never opened its marijuana retail shop at the Premises and therefore the  
4 additional \$2,500.00 in monthly rent never became due.

5 14. 4Ever Healing did not pay rent due for September, 2016, in the amount of \$6,000.00.  
6 4Ever Healing clearly breached the lease by not paying the September rent. The lease provides  
7 In Paragraph 17 that, "If any rents above reserved, or any part thereof, shall be and remain unpaid  
8 when the same shall become due, or if Lessee shall violate or default in any of the agreements  
9 herein contained, then the Lessor may cancel this lease upon giving the notice required by law  
10 and reenter the Premises, but notwithstanding such re-entry by the Lessor, the liability of the  
11 Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this  
12 Lease, and Lessee covenants and agrees to make good to the Lessor any deficiency arising from  
13 a re-entry and re-letting of the Premises at a lesser rental than herein agreed to. The Lessee  
14 shall pay such deficiency each month as the amount thereof is ascertained by the Lessor."

15 15. CCT posted a 3-Day Notice to Pay Rent or Vacate Premises at the Premises and on the  
16 shop on September 17, 2016, and as a result thereof 4Ever Healing vacated the Premises  
17 without paying the rent.

18 16. Although Mr. Shipman positioned vehicles on September 18, 2016, so that items could  
19 not be removed from the shop, the Defendants' access to the shop was not denied. The  
20 Defendants were prevented from removing an outside air conditioning unit.

21 17. The total amount of rent that would be paid for the life of the lease is \$360,000.00 (60  
22 months at \$6,000.00 per month). 4Ever Healing paid \$18,000.00 in rent for June through August,  
23 2016, and also paid \$15,000.00 for a relocation fee. The Plaintiff never relocated from Unit A on  
24 the property. Total payments under the Lease by 4Ever Healing were \$33,000.00 and are  
25 credited toward the total rent owed by 4Ever Healing under the Lease.

18. Based on the testimony and evidence presented, a valid rent amount for the shop building  
alone (Unit B) was agreed by the parties to be \$2,200.00 per month. 4Ever Healing vacated the  
property before October 1, 2016, and therefore there were fifty-six (56) months of rental income  
that could be generated by CCT when it reentered Unit B at \$2,200.00 per month, which amounts  
to \$123,200.00 of re-rental income for Unit B during the remaining balance of the Lease term.

19. The re-rental value of the home on the property (Unit A) was testified to by Mr. Shipman,

1 who explained that prior to the execution of the lease he was paying \$850.00 per month in rent  
2 and that he had not paid any rent since October, 2016, at that location. Mr. Shipman testified  
3 that the fair rental price for the house is between \$1,800.00 to \$2,000.00 per month according to  
research he did on Zillow.

4 20. With regards to the rental value of Unit A, Mr. Bassi testified that he had four renters lined  
5 up to move into Unit A in August, 2016. Three renters were to move into rooms upstairs at  
6 \$800.00 per month each and a fourth renter was to rent the downstairs at \$1,000.00 per month,  
7 for a total rent of \$3,400.00 per month. There were no written leases signed, but Dylan Pierce  
8 and Aundrea Brown testified to agreements they had reached with Mr. Bassi regarding renting  
rooms in the house and of their intent to move into the house in August, 2016.

9 21. Mr. Shipman failed to vacate Unit A by August 1, 2016, as agreed by the parties and 4Ever  
10 Healing lost rental income from Unit A in the amount of \$3,400.00 per month for August and  
September, 2016, for a total of \$6,800.00.

11 22. It is clear from the evidence that under the Lease, Plaintiff was charging 4Ever Healing  
12 \$3,800.00 per month for Unit A before its business opened and would charge \$6,300.00 per month  
13 after its business opened. Based on the evidence presented by the parties, the reasonable re-  
14 rental value of Unit A is \$2,700.00 per month for fifty-six (56) months beginning October 1, 2016,  
15 for the duration of the Lease, which amounts to \$151,200.00. The total damages owed by 4Ever  
16 Healing and Mr. Bassi as a guarantor for breaching the Lease is \$45,800.00, calculated as follows:  
17 \$360,000.00 total amount of rent for the life of the Lease - \$33,000.00 already paid by 4Ever  
18 Healing - \$123,200.00 re-rental income for the life of the Lease for Unit B - \$6,800.00 lost rental  
income from Unit A because Mr. Shipman did not move out by August 1, 2016 - \$151,200.00 re-  
rental income for the life of the Lease for Unit A = \$45,800.00.

19 23. Mr. Shipman offered photographs into evidence supporting his claim that cabinets were  
20 affixed to the walls and the floor and television monitors were mounted on the wall and the outside  
21 air conditioning unit was attached to the building. After reviewing the photographs admitted as  
22 evidence, and hearing the testimony of the witnesses, the Court is convinced by a preponderance  
23 of the evidence that the cabinets were affixed to the walls and to the floor, the television monitors  
were mounted on the wall, and the outside air conditioning unit was attached to the building. They  
were all fixtures that were to remain in the shop.

24 24. The Court finds that the value of the cabinets and monitors removed by 4Ever Healing  
25

1 after receipt of the Three Day Notice was \$6,700.00. The Plaintiff presented insufficient evidence  
2 to the Court in support of their claim of damage to the air conditioning unit or any other damage  
to the building that was caused by the Defendants.

3 25. The Lease required that 4Ever Healing pay real property taxes on the property during the  
4 period of the Lease. The Lease provided that real property taxes be considered additional rent.  
5 Paragraph 17 of the Lease stated that the liability of 4Ever Healing for rent will not be extinguished  
6 for the balance of the term of the Lease. Mr. Shipman testified that the taxes were \$1,600.00 per  
year in 2016. Taxes during the five-year Lease term equal \$8,000.00.

7 26. The parties each claim that they loaned the other \$6,000.00. The Court finds that Mr.  
8 Bassi was more credible in his testimony regarding the loan and that a \$2,000.00 payment made  
9 by CCT in August, 2016, was a partial payment on that loan. Based on the testimony, CCT owes  
Mr. Bassi the unpaid balance of \$4,000.00.

10 27. The loan was not a written contract and no parties testified regarding any contemplation  
11 of interest. Therefore, no interest will be awarded on the loan amount.

12 28. 4Ever Healing did not prove its claims for theft and conversion, forcible entry and tortious  
13 Interference with business expectancy. Further, Mr. Bassi did not prove tortious interference with  
14 Contract or conversion against Mr. Shipman. Mr. Bassi also did not prove that he was hired by  
Mr. Shipman to clear out the garage, build a fence, or haul material to the dump.

#### 15 **IV. CONCLUSIONS OF LAW**

16 1. This Court has jurisdiction over the parties to this action, over the subject matter of this  
action, and venue is proper in Pierce County Superior Court.

17 2. The landlord, CCT, is entitled to rent and additional rent accruing during the entire five-  
18 year term of the Lease, regardless of the provisions of section 17 of the Lease regarding  
19 deficiencies to be paid as they became due.

20 3. The Lease required that 4Ever Healing pay rent at the rate of \$6,000.00 per month until  
the business opened. The business never opened, therefore, the rent due under the Lease for  
21 the Lease term of sixty (60) months is \$6,000.00 per month for a total amount of rent due under  
22 the Lease of \$360,000.00.

23 4. 4Ever Healing paid rent for three (3) months out of the sixty (60) month term of the Lease.  
4Ever Healing paid \$15,000.00 to the Plaintiff for a relocation fee. These payments totaling  
24 \$33,000.00 shall be credited towards the total rent owed by 4Ever Healing under the Lease.

25 5. The re-rental value of the shop, Unit B, is \$2,200.00 per month. The rental value of Unit

1 B during the balance of the Lease term of fifty-six (56) months totals \$123,200. This amount shall  
2 be credited towards the total rent owed by 4Ever Healing under the Lease.

3 6. The re-rental value of the residence, Unit A, is \$2,700.00 per month, which totals  
4 \$151,200.00 for the remaining fifty-six (56) months of the Lease term. This amount shall be  
5 credited towards the total rent owed by 4Ever Healing under the Lease.

6 7. 4Ever Healing is entitled to a credit of \$6,800.00 against rent due under the lease for lost  
7 rent from Unit A due to CCT's failure to vacate Unit A on August 1, 2016.

8 8. Total damages to CCT from 4Ever Healing's failure to pay rent in breach of the Lease is  
9 \$45,800.00 based on the following calculation: \$360,000.00 total amount due under the Lease –  
10 \$33,000.00 rent and relocation fee paid by 4Ever Healing - \$123,200.00 rental value of Unit B  
11 during the balance of the Lease term - \$151,200.00 rental value of Unit A during the balance of  
12 the Lease term - \$6,800.00 lost rent to 4Ever Healing = \$45,800.00.

13 9. The show case cabinets, television monitors and air conditioning units purchased by the  
14 tenant became fixtures under the terms of the Lease.

15 10. CCT Construction is also entitled to damages arising from 4Ever Healing's breach of the  
16 Lease by its removal of fixtures installed by 4Ever Healing which became part of the Premises  
17 under the Lease at the time 4Ever Healing vacated the Premises in the amount of \$6,700.00.

18 11. The Lease provided that 4Ever Healing would be responsible for real property taxes due  
19 during the five (5)-year term of the Lease, which taxes are \$1,600.00 per year, which totaled  
20 \$8,000.00 owed by 4Ever Healing to CCT during the Lease term. The tenant is not entitled to  
21 any reduction in the amount of taxes that will become due during the five (5)-year period as a  
22 result of the Landlord's decision not to re-let the premises.

23 12. Mr. Bassi loaned Mr. Shipman \$6,000.00 in early August, 2016, and Mr. Shipman repaid  
24 only \$2,000.00 of that loan. That check was written by CCT, not Mr. Shipman. The unpaid  
25 balance of the loan, \$4,000.00, shall be credited towards the total amount owed by Defendants  
to the Plaintiff.

13. Total damages awarded to the Plaintiff in this matter are \$56,500.00.

14. Suranjit Bassi individually guaranteed 4Ever Healing's payment and performance of the  
terms of the Lease under the guaranty and is personally liable to CCT for the amount owed CCT  
by 4Ever healing of \$56,500.00.

15. Saranjit Bassi may not recover amounts he expended to clear Mr. Shipman's possessions  
from the garage, store Mr. Shipman's equipment, or to build a fence along CCT's premises.

1 16. The Plaintiff is entitled to his attorney fees and costs pursuant to Section 18 of the Lease.  
2 The Court finds that the hourly rate of Mr. Burnham (\$250.00) is reasonable, and that the hours  
3 expended are reasonable, with the exception of time spent with Bonney Lake officials regarding  
4 marijuana issues. Those meetings seemed to be more for the benefit of CCT Construction and/or  
5 Mr. Shipman in matters unrelated to this case. The costs requested are also reasonable.

6 **V. JUDGMENT**

7 Based on the foregoing, the Court expressly directs entry of judgment for the amounts stated  
8 above.

9 DATED this 22nd day of May, 2018.

10   
11 JUDGE EDMUND MURPHY



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**IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

CCT CONSTRUCTION INC, a Washington Corporation,

Plaintiff,

vs.

4EVER HEALING LLC, a Washington Limited Liability Company, dba FORBIDDEN CANNABIS CLUB, and SARANJIT BASSI, individually,

Defendants.

SARANJIT BASSI, individually,

Third Party Plaintiff,

vs.

CRAIG SHIPMAN,

Third Party Defendant.

Cause No: 16-2-12861-6

**JUDGMENT**

(JD)



**JUDGMENT SUMMARY**

- 1. Judgment Creditor: CCT CONSTRUCTION, INC.
- 2. Judgment Debtors: (1) 4EVER HEALING, LLC, a Washington Limited Liability Company  
(2) SARANJIT BASSI, an individual
- 3. Principal Judgment Amount: \$56,500.00
- 4. Interest to Date of Judgment: \$0.00
- 5. Attorney Fees: \$15,325.00
- 6. Costs: \$541.48
- 7. Other Recovery Amounts: \$0.00
- 8. Total Principal Judgment: \$72,366.48

9. Principal Judgment Amount Shall Bear Interest at 12% per annum.

10. Attorney Fees, Costs and Other Recovery Amounts Shall Bear Interest at 12% per annum.

11. Attorney for Judgment Creditor: Stephen A. Burnham, WSBA #13270  
Campbell, Dille, Barnett & Smith, P.L.L.C.  
317 South Meridian  
Puyallup, WA 98371

12. Attorney for Judgment Debtors: Lucy Clifthorne, WSBA #27287  
Vandeburg, Johnson & Gandara L.L.P.  
1201 Pacific Avenue, Suite 1900  
P.O. Box 1315  
Tacoma, WA 98401

THIS MATTER having come on regularly for hearing upon motion of the Plaintiff, by its attorney, Stephen Burnham of Campbell, Dille, Barnett, & Smith, P.L.L.C. for entry of Judgment against the Defendants, 4EVER HEALING, LLC d.b.a. FORBIDDEN CANNABIS CLUB and SARANJIT BASSI, individually, and the Court having entered Findings of Fact and Conclusions of Law; it is hereby

ORDERED, ADJUDGED and DECREED that judgment be entered for Plaintiff and against the Defendants, 4EVER HEALING, LLC d.b.a. FORBIDDEN CANNABIS CLUB and SARANJIT BASSI, individually, in the total amount of \$56,500.00; and it is further

ORDERED, ADJUDGED and DECREED that judgment be entered for the Plaintiff and against the Defendants for Plaintiff's attorney fees and costs in the amount of \$15,325.00 for fees, and for Plaintiff's costs of suit in the amount of \$541.48 pursuant to terms of the parties' contract and as allowed by law; and it is further

ORDERED, ADJUDGED, and DECREED that said judgment shall bear interest at 12% per annum from the date of this judgment until paid.

DATED this 22nd day of May, 2018.

  
JUDGE EDMUND MURPHY



**Exhibit 13: Three Day Notice to Pay or Vacate dated September 17,  
2016.**

### 3-DAY NOTICE TO PAY RENT OR VACATE PREMISES

**NOTICE TO:** 4Ever Healing, LLC  
And any and all additional occupants at  
22308 State Route 410 East, Units "A" and "B"  
Bonney Lake, WA 98391

Pivotal Law Group  
1200 5th Avenue, Ste. 1217  
Seattle WA 98101  
Attn: Michael A. Larson

**YOU ARE HEREBY NOTIFIED** that you must either pay the sum of \$13,100.00 for the months of June, July, August and September, 2016 rent, or, in the alternative, vacate the premises commonly known as 22308 State Route 410 East, Units "A" and "B", Bonney Lake, WA 98391 within three (3) days of service of this notice upon you.

**YOUR FAILURE TO PAY THE SUM STATED ABOVE** to the undersigned within three (3) days of the date of service of this Notice upon you will result in your being in unlawful detainer of the premises described and judicial proceedings will be instituted for your eviction. You are further notified that the landlord reserves its rights to recover late charges, the security deposit, as well as rent reserved in the future and other damages.

**DATED** this 15<sup>th</sup> day of September, 2016.

By:   
Stephen A. Burnham of Campbell, Dille, Barnett,  
& Smith, PLLC, Attorneys for Landlords  
317 S. Meridian  
Puyallup, WA 98371  
Tel: 253-848-3513 Fax: 253-845-4941

3-DAY NOTICE TO PAY RENT OR VACATE PREMISES

Declaration of Posting:

**3-DAY NOTICE TO PAY RENT OR VACATE  
PREMISES,**

**NOTICE TO:**

**4Ever Healing, LLC  
And any and all additional occupants at  
22308 State Route 410 East, Unit "A" AND "B"  
Bonney Lake, WA. 98391**

The undersigned, hereby declares under penalty of perjury under the laws of the State of Washington, that the following is true and correct: I am now, and at all times herein mentioned, a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to or have an interest in the above entitled action and competent to be a witness.

On the date of SEPTEMBER 16, 2016 at 8:20PM, at the address of 22308 State Route 410 East, Unit "B", City of BONNEY LAKE, WASHINGTON 98391, I duly **POSTED** the above described documents addressed to 4EVER HEALING, LLC. by then and there posting one true and correct copy to the front door of the building.

DATE: SEPTEMBER 17, 2016

BY   
MELVIN CAHOON 9188  
TACOMA, WA.  
PIERCE COUNTY

**Exhibit 21: Text Messages between Shipman and Bassi – September 6,  
2016 to October 5, 2016**

me because I can't  
open it

Sonny I'm sorry but I've got obligations to pay and you have an obligation on the lease please review that carefully. From day one I told you to do bare minimum to get opened up I told you not to paint the shop I told you to put ADA requirements in your words to me were you can't close down to remodel.

down to remodel.  
With that being said I  
have to remove all  
your framing wiring  
buy new garage  
doors /openers and  
repaint the shop if  
you choose to  
terminate the lease  
so I do not benefit  
from all the money  
you put into the  
shop. You have a  
very marketable  
place right now it's  
finished and ready to  
open for Business  
and can be sold

traded etc.

That is why I told you not to remove the items inside the shop the lease is very specific that anything you do stays. That is actually to help you out is why I told you to stop you cannot sell it if you start to take out all the improvements. The few dollars that you would get on refund is not worth the

is not worth the ramifications of the lease and the unmarketable cannabis license. Steve has told me he has a couple of options for you one being a person is interested in coming up here that has a cannabis license interested in trading!!!! Would it not be better to have a license somewhere then no license at all

you let me know  
what you think  
please

When do you think  
you can drop the  
keys off?

I have done my best  
with you. When you  
put 3 day notice on  
the building and sent  
it to lawyer. You  
gave me no choice to  
keep my stuff safe.  
Have you do  
ne anything with city  
to convert it to

**commercial retail  
space. I told you I  
have been working  
with Randy from city  
council. I was doing  
my part with the**

**city until you sent  
the three day notice.**

**You think I really  
wanted to take all my  
stuff out. No I just  
wanted to protect my  
stuff. You have  
changed few thing  
on me so I didn't  
know what you wher**

e planning to do.  
When I saw you last  
Monday you did  
saying anything  
about the 3 day  
notice to me. That  
was some sneaky  
stuff

I told you when you  
told me it was my  
fault you were broke  
that I was going to  
start proceedings I  
said I was done with  
you. Steve had a guy  
and chahalis that  
was interested in

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on the 22nd day of March, 2019 I caused to be served in the manner indicated a true and accurate copy of the foregoing, Declaration, by the method indicated below and addressed to the following:

Lucy Clifthorne Vandeberg Johnson & Gandara, LLP P O Box 1315 Tacoma, WA 98401-1315 lclifthorne@vjglaw.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight <input checked="" type="checkbox"/> Email/E-service <input type="checkbox"/> Messenger
--	---

/s/ Lynell Bonnes  
Lynell Bonnes  
Legal Assistant to Stephen A. Burnham

**CAMPBELL BARNETT PLLC**

**March 22, 2019 - 1:50 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52557-7  
**Appellate Court Case Title:** 4Ever Healing LLC and Saranjit Bassi, Appellants v. CCT Construction Inc.,  
Respondent  
**Superior Court Case Number:** 16-2-12861-6

**The following documents have been uploaded:**

- 525577\_Briefs\_20190322134740D2471202\_4175.pdf  
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Sender Name: Lynell Bonnes - Email: lbonnes@cdb-law.com

**Filing on Behalf of:** Stephen Andrew Burnham - Email: steveb@cdb-law.com (Alternate Email: )

Address:  
317 South Meridian  
P.O. Box 488  
Puyallup, WA, 98371  
Phone: (253) 848-3513

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