

RECEIVED

APR - 3 2025
ROOM 521

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

OLS Office Partners, L.P. and	:	SEPTEMBER TERM 2019
Brandywine One Logan, LLC trading as	:	
OLS OFFICE PARTNERS, L.P.	:	No. 03680
c/o their managing agent	:	
Brandywine Realty Trust	:	COMMERCE PROGRAM
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
AVRAM HORNIK and	:	
JONATHAN D. MYEROW,	:	
	:	
Defendants.	:	

DOCKETED

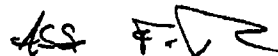
APR 3 2025

R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 3rd day of April 2025, as set forth in the accompanying Findings of Fact and Conclusions of Law entered today, it is **ORDERED** judgment is entered in favor of defendants Avram Hornik and Jonathan D. Myerow and against plaintiff OLS Office Partners, L.P., for breach of contract.

BY THE COURT:



ABBE F. FLETMAN, J.

WSFFD-OLS Office Partners, L.P. Vs Hornik Etal [RCP]



19090368000138

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

OLS Office Partners, L.P. and	:	SEPTEMBER TERM 2019
Brandywine One Logan, LLC trading as	:	
OLS OFFICE PARTNERS, L.P.	:	No. 03680
c/o their managing agent	:	
Brandywine Realty Trust	:	COMMERCE PROGRAM
	:	
Plaintiff,	:	
v.	:	
	:	
AVRAM HORNIK and	:	
JONATHAN D. MYEROW,	:	
	:	
Defendants.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

April 3, 2025

Plaintiff OLS Office Partners, L.P. (“OLS” or “Landlord”), brought this confession of judgment action against defendants Avram Hornik and Jonathan D. Myerow on September 30, 2019, seeking to collect on a guaranty Mr. Hornik and Mr. Myerow undertook on a commercial lease totaling \$850,227.84, comprising fixed rent in the amount of \$668,984.40, operating expenses in the amount of \$103,950.00, and attorneys’ fees (10 percent per the guaranty) of \$77,293.44.¹ Comp. in Confession of Judgment, Trial Court Docket (“Dkt.”) at 9/30/19.

Mr. Myerow filed a petition to open judgment on October 31, 2019, followed by the filing of a petition to open and/or strike the judgment by Mr. Hornik on November 8, 2019.

¹ On March 8, 2022, Mr. Hornik initiated an action against OLS for breach of the lease, which was consolidated with the above-captioned action. *See* Case No. 220300980, Comp., Dkt. at 3/11/22; Case No. 220300980, Order, Dkt. at 6/17/22. At trial, Mr. Hornik withdrew his action against OLS with prejudice. 6/24/24 Trial Transcript (“Trial Tr.”) at 217:8-13. Only the confession of judgment action proceeded to trial.

Petition to Open Judgment, Dkt. at 10/31/19; Petition to Open or Strike Judgment, Dkt. at 11/8/19. The Court opened the confession of judgment action on January 30, 2020. Order, Dkt. at 1/30/20.

For the reasons discussed below, the Court finds for Mr. Hornik and Mr. Myerow and against OLS on its breach of contract claim.

FINDINGS OF FACT

A. The Parties

1. Plaintiff OLS is a Delaware limited partnership that owns the One Logan Square office tower (“One Logan”) in Center City Philadelphia. 6/25/24 Trial Tr. at 86:23-87:9, 87:15-24 (Matthew Croce testimony). OLS stands for One Logan Square. *Id.* at 87:25-88:3.
2. OLS’s general partner is Brandywine One Logan, LLC (“Brandywine One Logan”) and OLS’s managing agent is Brandywine Realty Trust (“Brandywine”). *Id.* at 86:23-87:9.
3. Brandywine is a public real estate investment trust that is traded on the New York Stock Exchange. 6/24/24 Trial Tr. at 157:14-158:13 (Croce testimony). It creates separate entities, like OLS, for each building it acquires, including One Logan and Three Logan Square (“Three Logan”). *Id.*
4. Defendant Jonathan D. Myerow is the president and founder of the Tria group. 6/25/24 Trial Tr. at 172:15-17 (Myerow testimony).
5. The Tria group owns and operates wine bars in Philadelphia. *Id.* at 173:10-15.
6. Defendant Avram Hornik entered into a partnership with Tria in 2016 because Tria was facing financial difficulty and needed a cash infusion. *Id.* at 172:25-173:8. In addition,

Mr. Myerow viewed Mr. Hornik as a talented restaurant operator and thought his skills would enhance Tria's business. *Id.*

B. 31South17 and Suite 100

7. Mr. Hornik formed 31South17, LLC ("31South17"), a Pennsylvania limited liability company, for the purpose of opening a Tria restaurant at One Logan. *Id.* at 174:2-11.

8. Starting in 2016, OLS was looking to develop the first floor of One Logan with a "sophisticated happy hour scene" that was also a "nice place for tenants to casually meet and have a place to go in the building." 6/24/24 Trial Tr. at 74:24-75:6 (Croce testimony).

9. The space where Tria was to be located ("Suite 100") is on the first floor of One Logan and comprises approximately 2,520 square feet. *Id.* at 74:10-23, 86:7-15. It is rectangular with a roughly 20-foot-high ceiling and glass walls. *Id.*

10. Real estate assets in Center City Philadelphia can be graded as trophy class, class A, class B, or class C. *Id.* at 71:22-72:3.

11. Brandywine's vice president of leasing described One Logan as a trophy class building given its location, unobstructed view, and the quality of its building materials. *Id.* at 72:10-24.

12. Mr. Myerow and Mr. Hornik became acquainted with OLS through a third-party retail broker. *Id.* at 76:8-21; 6/25/24 Trial Tr. at 173:16-19 (Myerow testimony).

13. Mr. Myerow and Mr. Hornik visited One Logan and toured Suite 100 more than 10 times before 31South17 entered into a lease with OLS. 6/25/24 Trial Tr. at 124:7-17 (Hornik testimony); 6/25/24 192:18-193:1 (Myerow testimony). A few of these on-site meetings were held so that the parties could discuss what concept was feasible for the space and Tria could assess whether this was a good opportunity. 6/24/25 Trial Tr. at 77:4-18 (Croce testimony).

C. The One Logan Square Lease and the Guaranty

14. Mr. Hornik and Mr. Myerow's primary point of contact at OLS was Matthew Croce, the director of leasing at Brandywine at that time. *Id.* at 69:16-22, 70:4-20. Mr. Croce negotiated the lease on behalf of OLS. *Id.* at 70:4-20.

15. Mr. Croce reported to the executive vice president of Brandywine, Jeffrey DeVuono. *Id.*

16. On June 1, 2017, Mr. Myerow signed a lease (the "Lease") for Suite 100 on behalf of 31South17, P-1 (One Logan Lease at 31). George Johnstone, the executive vice president of operations of Brandywine One Logan, signed the Lease on behalf of OLS. *Id.*

17. Mr. Myerow and Mr. Hornik personally guaranteed the prompt payment of rent and other sums payable by 31South17, and the faithful performance by 31South17 of all of the terms, conditions and covenants of the Lease. *Id.* at § 1(l); P-2 (Lease Guaranty Agreement ("Guaranty") (Ex. B at ¶ B(1))).

18. The Guaranty started on the commencement date and ended on the five-year anniversary of the fixed-rent start date under the Lease. 6/24/24 Trial Tr. at 107:1-108:4 (Croce testimony); P-2 (Guaranty (Ex. B at ¶ B(1))). The start date of the fixed rent was April 1, 2020, and the five-year anniversary of the fixed rent-start date is March 31, 2025. 6/25/24 Trial Tr. at 90:20-91:4 (Croce testimony).

19. The commencement date is defined as the first day that 31South17 does business or April 1, 2019, whichever is earlier. P-1 (One Logan Lease at § 1(g)). April 1, 2019 is the commencement date as 31South17 did no business before then. *See* P-11 (1/25/19 default letter); Comp. in Confession of Judgment, Dkt. at 9/30/19.

20. On June 1, 2017, Mr. Hornik or a combination of Mr. Hornik and Mr. Myerow paid a security deposit of \$12,500 and the first month's rent of \$10,000 to OLS. 6/24/24 Trial Tr. at 181:6-25 (Croce testimony).

21. The Lease provides that the 31South17 would use the premises "for a high-end wine bar and restaurant with a full liquor license, and for no other purpose." P-1 (One Logan Lease at § 8(a)).

22. The Lease also provides that the tenant's trade name shall be "Tria Wine Bar or, subject to Landlord approval, another variation of the name which includes the word, 'Tria.'" *Id.* at § 1(v).

23. The Lease allows OLS to "in its sole discretion, exercise quality and coordination control and approval over Tenant's entire operation and instillation at the Premises, including all operational standards, menus, and other matters." *Id.* at § 8(a).

24. The high-end wine bar and restaurant was to be built after October 1, 2018, following OLS's demolition of the existing office in the space and delivery of possession to 31South17. *Id.* at § 1(h) and Exhibit E; 6/25/24 Trial Tr. at 68:20-25 (Croce testimony).

25. 31South17 was to submit the plans for the high-end wine bar and restaurant to OLS on November 1, 2018, 30 days after the premises delivery date of October 1, 2018. P-1 (One Logan Lease at § 1(h)); 6/25/24 Trial Tr. at 29:5-9, 68:15-69:4 (Croce testimony).

26. If 31South17 spent \$1 million on the construction of the high-end wine bar, OLS anticipated spending another \$120,000 as a part of the tenant improvement allowance. 6/25/24 Trial Tr. at 30:24-32:7 (Croce testimony). This \$120,000 was amortized and factored into the Lease rent. *Id.*

27. OLS agreed to pay for some of the work necessary to allow the construction of the high-end wine bar and restaurant, including demolition of the existing marketing and leasing office at Suite 100, installation of certain air handling and electrical equipment, and compliance with certain fire and life safety requirements per Exhibit E of the Lease. P-1 (One Logan Lease at 51).

28. The cost estimate for the work required to comply with Exhibit E was \$40,000 to \$50,000. 6/25/24 Trial Tr. at 84:12-20 (Croce testimony).

D. High-end Wine Bar and Restaurant

29. Mr. Croce considered the Sansom Street Oyster House an example of a high-end wine bar restaurant with a full liquor license in Philadelphia. *Id.* at 45:18-46:6. Mr. Croce identified the bar at the Philadelphia Four Seasons Hotel as being at the highest end of such establishments. *Id.* at 45:18-46:18.

30. Mr. Croce described Harper's Garden as a rustic bar, not a high-end wine bar. *Id.* at 48:8-20.

31. Per Exhibit C of the Lease, "[t]he proposed Plans shall be in substantial conformity with the plans attached hereto as Exhibit C-3." P-1 (One Logan Lease at 36).

32. Exhibit C-3 comprises design renderings consistent with a high-end wine bar and restaurant with full liquor license as required by the Lease. 6/25/24 Trial Tr. at 38:7-20 (Croce testimony).

33. The renderings attached to the Lease as Exhibit C-3 were completed without cost estimates or an analysis by OLS. *Id.* at 28:15-29:29.

34. Mr. Hornik testified at trial that the renderings in Exhibit C-3 described "the look and the aesthetic that we were going to deliver." *Id.* at 127:9-19 (Hornik testimony)

E. October 30, 2017, Letter and the FMC Meeting

35. Around October 2017, Mr. Hornik and Mr. Myerow were terminating their partnership. As a result, Mr. Hornik obtained sole control of the One Logan Lease. *Id.* at 131:12-24.

36. On October 30, 2017, with Mr. Hornik's approval, Mr. Myerow sent a letter to OLS on Tria stationery. P-3 (Myerow 10/30/17 letter); 6/25/24 Trial Tr. at 134:9-18 (Hornik testimony).

37. In the letter, Mr. Myerow reported to OLS that delays and cost overruns at a different project placed Tria in a weakened financial position, which would require Tria to scale back on its expansion plans. P-3 (Myerow 10/20/17 letter).

38. The letter continued that Tria lacked the ability to deliver a product that an asset of One Logan's caliber demands. It further stated, "If forced, we will find a way to complete this project. But we believe that Tria's tenancy will likely result in a lose-lose situation." *Id.*

39. Mr. Hornik testified at trial that while 31South17 was not in a financial position to open a Tria bar/restaurant at One Logan Square, Mr. Hornik was. 6/25/24 Trial Tr. at 135:10-23 (Hornik testimony).

40. In November 2017, Mr. Myerow and Mr. Hornik met with three representatives of OLS – Mr. Croce, Mr. DeVuono, and Mr. Johnstone – at the FMC Tower owned by Brandywine. 6/24/24 Trial Tr. at 118:1-20 (Croce testimony); 6/25/24 Trial Tr. at 67:15-21 (Croce testimony).

41. At that meeting, OLS expressed a willingness to provide 31South17 with financial assistance to meet the up-front costs to build a Tria bar at One Logan. 6/24/24 Trial Tr. at 119:20-120:20 (Croce testimony).

42. Mr. Hornik agreed to hire and pay HOK, an architectural firm that OLS used, so that OLS and Mr. Hornik could create detailed plans for a high-end wine bar and restaurant that OLS would approve and prepare an estimated construction budget to restructure the Lease if OLS agreed to contribute to the up-front construction costs. *Id.*; 6/25/24 Trial Tr. at 147:18-149:12 (Hornik testimony).

43. OLS agreed to increase the tenant improvement allowance by \$500,000 for physical improvements to Suite 100 in exchange for an extension of the lease term and increased rent. 6/24/24 Trial Tr. at 122:7-24 (Croce testimony). The \$500,000 would effectively be a loan with 12 percent interest, bringing the monthly rent from \$50 per square foot to \$80 per square foot. *Id.* at 198:8-20, 199:13-18.

44. Mr. Hornik thought that OLS agreed to raise the tenant improvement allowance by \$500,000 without an increase in rent and was surprised to learn of OLS's proposal to increase the rent. 6/25/24 Trial Tr. at 144:8-16, 145:7-146:5 (Hornik testimony).

45. At this meeting, it became clear to Mr. Hornik that OLS was "looking for a higher level of fixtures and finishes than was required in the lease." *Id.* at 147:18-148:12.

46. Mr. Hornik expected OLS to cover the difference between what he could pay, \$800,000, and the cost of what OLS wanted, because Mr. Hornik believed that what OLS wanted was not what was contracted for in the Lease. *Id.* at 147:18-150:21.

47. Mr. Myerow was initially involved with the design plans by HOK, but around March 2018 Mr. Hornik informed OLS that the partnership with Mr. Myerow was ending and that only Mr. Hornik would proceed with OLS. 6/24/24 Trial Tr. at 123:3-24 (Croce testimony); 6/25/24 Trial Tr. at 70:6-70:15 (Croce testimony).

48. Mr. Croce informed Mr. Hornik that he was considering removing Mr. Myerow from the Lease and the Guaranty. 6/24/24 Trial Tr. at 123:3-24 (Croce testimony). Mr. Myerow, however, was never removed from the Guaranty or the Lease. 6/25/24 Trial Tr. at 216:3-11 (Croce testimony).

49. The estimated project cost based on the HOK design was \$1,800,000. *Id.* at 69:9-14. With value engineering, an analysis that would cut material costs, the goal was to reduce costs to \$1,500,000. *Id.* at 69:17-21.

50. OLS did not agree to cover the difference between the estimated project cost and the \$800,000 that Mr. Hornik was willing to invest, so the Lease was never modified. 6/25/24 Trial Tr. at 148:18-149:19 (Hornik testimony).

F. Three Logan Square

51. At a later point, Mr. Croce received a phone call from Mr. Hornik that the HOK concept was not going to work, and that Mr. Hornik was prepared to deliver a concept that OLS was “not going to be happy with.” 6/24/24 Trial Tr. at 124:19-125:5 (Croce testimony).

52. Mr. Croce testified at trial that Mr. Hornik’s suggested concept was based on Harper’s Garden, another establishment that Mr. Hornik had developed. *Id.* at 112:21-113:10, 125:20-126:12.

53. Mr. Hornik testified at trial that he never proposed the Harper’s Garden concept to OLS and that he was prepared to deliver a project in accordance with the renderings attached to the Lease. 6/25/24 Trial Tr. at 153:22-154:25 (Hornik testimony).

54. The renderings and the Harper’s Garden concept, however, shared several similarities, including the use of reclaimed wood for the flooring, market lights outside, a rectangular bar, and indoor greenery. *Id.* at 161:25-162:24.

55. Mr. Croce was unwilling to move forward with a concept like Harper's Garden for Suite 100 but was willing to consider it for Three Logan, a neighboring building that Brandywine also managed. 6/24/24 Trial Tr. at 126:25-127:15 (Croce testimony).

56. Mr. Croce led discussions about Three Logan with Mr. Hornik when it became apparent to Mr. Croce that the high-end wine bar concept for OLS was no longer a possibility. *Id.* at 127:16-129-17.

57. Mr. Croce had the opportunity to visit Harper's Garden to assess its suitability for Three Logan. *Id.*

58. On October 18, 2018, Mr. Croce sent an email to Mr. Hornik in an attempt to negotiate and close this deal. *Id.* at 129:18-17; Ex. P-6 (10/18/18 email chain).

59. A lease was drafted for Three Logan but was never executed. P-6 (10/18/18 email chain); 6/24/24 Trial Tr. at 133:2-133:7 (Croce testimony).

60. On October 31, 2018, Mr. Hornik asked Mr. Croce for more time to work out the issues with a Three Logan lease as he was calculating startup construction costs and operating profits. P-7 (10/31/18 email chain); 6/24/24 Trial Tr. at 133:20-134:4 (Croce testimony).

61. Nearly a month later, on November 28, 2018, Mr. Hornik sent another email to Mr. Croce saying that without additional outdoor space and OLS providing capital costs for renovations, the Three Logan project was not financially feasible for him. P-8 (11/26/18 email chain).

62. On December 7, 2018, Mr. Croce emailed Mr. Hornik to inform him that Brandywine was prepared to give additional outdoor space for seating at Three Logan. P-9 (1/14/19 email chain).

G. January 14, 2019, Email

63. Mr. Croce did not hear from Mr. Hornik between December 2018 and January 14, 2019. 6/24/24 Trial Tr. at 140:4-143:7 (Croce testimony).

64. On January 14, 2019, Mr. Hornik sent an email to Mr. Croce and Scott Benson, the broker. P-10 (1/14/19 email chain); 6/24/24 Trial Tr. at 142:5-20 (Croce testimony).

65. In this email chain, Mr. Hornik communicated that he could not move forward on the Three Logan Square project. P-10 (1/14/19 email chain).

66. Mr. Hornik also asked, "Matt, do you want to terminate the One Logan Lease?" *Id.*

H. Notice of Default and Commencement of This Action

67. A lawyer for OLS sent a notice of default to Mr. Hornik and Mr. Myerow on January 25, 2019. P-11 (1/25/19 default letter).

68. After the notice of default was sent, Mr. Croce heard nothing from Mr. Hornik. 6/24/24 Trial Tr. at 145:2-5 (Croce testimony).

69. On September 30, 2019, OLS filed this action against Mr. Myerow and Mr. Hornik. Comp. in Confession of Judgment, Dkt. at 9/30/19.

70. The Court held a bench trial on the matter on June 24 and 25, 2024.

I. Suite 100 Tenant

71. Before OLS and 31South17 entered into the Lease, Suite 100 was subject to a lease dated March 4, 2005, between OLS and Brandywine Operating Partnership, L.P. 6/24/24 Trial Tr. at 163:22-164:17 (Croce testimony); P-29 (Lease at pp. 1-15). This was superseded by a lease between OLS and Brandywine dated November 22, 2011, *id.* at pp. 16-29; a First Amendment to Lease dated May 20, 2016, *id.* at pp. 30-35; a Second Amendment to Lease dated January 22, 2019,

id. at pp. 36-40; and a Third Amendment to Lease dated June 15, 2021, *id.* at pp. 41-44. Under these leases, Brandywine is the tenant for Suite 100 through January 31, 2025.

72. Under the Brandywine leases, Suite 100 was used as office space for property management of One, Two and Three Logan, as well as support staff and leasing staff that oversee the leasing for those properties. 6/24/24 Trial Tr. at 159:8-12 (Croce testimony)

73. Suite 100 was never delivered to 31South17 and the offices in Suite 100 were not demolished. *See* 6/25/24 Trial Tr. 111:5-20 (Croce testimony).

CONCLUSIONS OF LAW

I. THE LEASE IS A VALID CONTRACT

1. “It is black letter law that in order to form an enforceable contract, there must be an offer, acceptance, consideration or mutual meeting of the minds.” *Gasbarre Prods., Inc. v. Smith*, 270 A.3d 1209, 1218 (Pa. Super. 2022) (*quoting Jenkins v. Cty. of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995)).

2. The offer and acceptance were formalized by the signing of the Lease. *See* P-1 (One Logan Lease).

3. The consideration for this contract was a security deposit of \$12,500 and the first month’s rent of \$10,000 paid by Mr. Hornik or a combination of Mr. Hornik and Mr. Myerow to OLS on June 1, 2017. 6/24/24 Trial Tr. at 181:6-25 (Croce testimony).

4. Mr. Hornik argues that the Court should rescind the Lease because the parties had “vastly and materially different understandings of the meaning” of the term “high-end wine bar and restaurant with a full liquor license.” Avram Hornik’s Proposed Findings of Fact and Conclusions of Law at ¶ 149, Dkt. at 8/26/2024.

5. “Mutual mistake exists, however, only where both parties to a contract [are] mistaken as to existing facts at the time of execution.” *Zurich Am. Ins. Co. v. O’Hanlon*, 968 A.2d 765, 770 (Pa. Super. 2009) (quoting *Holmes v. Lankenau Hosp.*, 627 A.2d 763, 767–68 (Pa. Super. 1993)). “[T]he moving party is required to show the existence of the mutual mistake by evidence that is clear, precise and convincing.” *Id.*

6. Per the Lease, Exhibit C-3 depicts a high-end wine bar and restaurant that would have been acceptable to OLS. P-1 (One Logan Lease at 36).

7. There was no mutual mistake as to the fit, finish, and look of the high-end wine bar and restaurant. Both OLS and 31South17 agreed to a high-end wine bar and restaurant in substantial compliance with Exhibit C-3. *See id.*

II. BREACH OF CONTRACT

A. OLS Office Partners Failed to Establish Anticipatory Breach of Contract

8. To establish a breach of contract, a plaintiff must show “[(1)] the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages.” *Discover Bank v. Booker*, 259 A.3d 493, 495 (Pa. Super. 2021).

9. For a claim of anticipatory breach, there must be “an absolute and unequivocal refusal to perform or a distinct and positive statement of an inability to do so.” *2401 Pennsylvania Ave. Corp. v. Fedn. of Jewish Agencies of Greater Philadelphia*, 489 A.2d 733, 736 (Pa. 1985) (quoting *McClelland v. New Amsterdam Casualty Co.*, 185 A. 198, 200 (Pa. 1936)).

10. OLS alleges that 31South17 anticipatorily breached the Lease through the letter Mr. Myerow sent on October 30, 2017, outlining Tria’s financial difficulties and the email Mr. Hornik sent on January 14, 2019, stating that he could not move forward on Three Logan and inquiring

whether OLS wanted to terminate the One Logan Lease. Comp. in Confession of Judgment, Dkt. at 9/30/19.

11. Neither of these communications, however, amounts to “an absolute and unequivocal refusal to perform or a distinct and positive statement of an inability to do so.” 2401 *Pennsylvania Ave. Corp.*, 489 A.2d at 736.

12. In the October 30, 2017, letter Mr. Myerow stated that “[i]f forced, we will find a way to complete this project.” P-3 (Myerow 10/30/17 letter).

13. Mr. Myerow’s assurance that he and Mr. Hornik would find a way to complete this project evidences that this was not an absolute refusal to perform or a positive statement of an inability to do so.

14. OLS argues that because Mr. Myerow and Mr. Hornik stated they could not deliver the high-end wine bar concept conceived by HOK, they made a positive statement of an inability to honor the Lease. OLS Office Partners, L.P.’s Proposed Findings of Fact and Conclusions of Law at ¶ 57, Dkt. at 8/26/2024.

15. The Lease did not require 31South17 to deliver a bar/restaurant in compliance with the HOK designs, which did not even exist when the Lease was signed.

16. Mr. Hornik testified that he was prepared to deliver a product in compliance with the Lease and the renderings attached to the Lease. 6/25/24 Trial Tr. at 153:22-154:25 (Hornik testimony). The Court found this testimony credible.

17. In the January 14, 2019, email sent to Mr. Croce, Mr. Hornik asked, “Matt, do you want to terminate the One Logan Lease?” P-10 (1/14/19 email chain).

18. In that email, Mr. Hornik was merely asking a question, not absolutely refusing to perform.

19. Thus, there was no breach of contract through anticipatory repudiation in either the letter sent by Mr. Myerow or the email sent by Mr. Hornik.

B. OLS Office Partners Breached the Lease

20. The Lease stated that OLS would deliver the premises to 31South17 on October 1, 2018, but Suite 100 was never delivered to 31South17. P-1 (One Logan Lease at § 1(h)); 6/25/24 Trial Tr. at 29:5-9, 68:15-69:4, 111:5-20 (Croce testimony).

21. OLS never moved the Brandywine management offices out of Suite 100. 6/25/24 Trial Tr. 111:5-20 (Croce testimony).

22. OLS never started the work it promised in Exhibit E of the Lease to prepare the site for construction of a Tria bar and restaurant. *See* 6/25/24 Trial Tr. at 81:18-84:20 (Croce testimony); P-1 (One Logan Lease at 51).

23. The notice of default letter that OLS sent to Mr. Hornik and Mr. Myerow on January 25, 2019, was sent after OLS breached the Lease by failing to deliver the leased premises. P-11 (1/25/19 default letter).

24. Therefore, OLS breached the Lease and is not entitled to the defaults it seeks under the Guaranty in this confession of judgment action.²

² Because the Court holds that OLS breached the Lease and 31South17 did not breach the Lease, defendants Hornik and Myerow are not liable under the Guaranty and no analysis of alleged damages is necessary. Similarly, because the Court holds that Mr. Myerow is not liable under the Guaranty, it need not analyze his argument that the Guaranty was modified to exclude him.

CONCLUSION

For all the foregoing reasons, the Court finds for defendants Avram Hornik and Jonathan Myerow and against plaintiff OLS Office Partners, L.P. on the breach of contract claim seeking payment under the Guaranty.

BY THE COURT:



ABBE F. FLETMAN, J.