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

ATKIN OLSHIN SCHADE
ARCHITECTS, INC.

v.

EB REALTY MANAGEMENT CORP.

:
:
: Case ID: 210202098
:
:
: COMMERCE PROGRAM
:

DOCKETED

MAR 26 2025

R. POSTELL
COMMERCE PROGRAM

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a simple breach-of-contract case in which a real estate developer hired an architect to design a mixed-use development in Center City Philadelphia under a fixed-fee contract. The architect performed the work, and the developer failed to pay for it. The Court presided over a bench trial on the matter in April 2024 and now issues its findings of fact and conclusions of law. For the reasons discussed below, the Court finds for plaintiff Atkin Olshin Schade Architects (“AOS”) and against defendant EB Realty Management Corp. (“EBRM”) on AOS’s breach of contract claims in the amount of \$303,656.87 (\$243,940.29 contractual damages) plus interest at the annual rate of six percent accruing daily since February 23, 2021 (\$59,716.58 through 3/26/25) but is awarding no lost profits because AOS failed to establish that lost profits were reasonably certain or foreseeable.

FINDINGS OF FACT

1. Plaintiff AOS is an architectural firm founded in 1979 in Philadelphia, Pennsylvania. Trial Transcript (“Tr.”) 4/15/24, Michael Schade testimony (“Schade”) at 32:18-20.
2. The firm has approximately 20 employees. *Id.* at 32:23-25.

FACTS-Atkin Olshin Schade Architects, Inc. Vs Eb Realty [RCP]



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3. Sam Olshin and Michael Schade are the principals of AOS. Tr. 4/15/24, Schade at 31:22-25; Tr. 4/15/24, Sam Olshin testimony (“Olshin”) at 144:19-21.

4. AOS typically performs preservation and urban design projects for developers in Center City Philadelphia and has worked on high-profile projects including the Anne d’Harnoncourt Sculpture Garden at the Philadelphia Museum of Art, renovations to the Academy of Music, and the Metropolitan Opera House (the “Met”) on North Broad Street, which it developed with EBRM owner Eric Blumenfeld. Tr. 4/15/24, Schade at 33:5-8, 11-20.

5. Defendant EBRM is a real-estate development corporation owned by Mr. Blumenfeld. Tr. 4/17/24, Eric Blumenfeld testimony (“Blumenfeld”) at 5:8-10.

A. The Mural West Project

6. EBRM hired AOS to design the Mural West Project (“Mural West”) at the northeast corner of Broad and Spring Garden Streets in Philadelphia as a mixed-use high-rise 30-story building with one floor of retail, five floors of health club, and 24 floors of residential apartment units. P-2 (Exhibit A – AOS Proposal dated 02/28/2019 from Sam Olshin to Eric Blumenfeld).

7. Mural West was named after its location near the well-known Common Threads mural at 525 North Broad Street. Tr. 4/17/24, Blumenfeld at 5:12-21.

8. The estimated construction cost was \$128 million. *Id.*

9. Mr. Blumenfeld established a sole purpose entity called Mural West LP to buy the site for Mural West. Tr. 4/17/24, Blumenfeld at 56:20-22.

10. Domus Construction (“Domus”) is a construction company that served as the construction manager for Mural West. Tr. 4/16/24, Robert Malagoli testimony (“Malagoli”) at 174:9-10.¹

11. Mr. Malagoli is one of the partners at Domus who worked on Mural West. Tr. 4/16/24, Malagoli at 171:21-172:5.

12. Domus acted as EBRM’s agent on the project. Tr. 4/15/24, Olshin at 156:2-5; Tr. 4/16/24, Malagoli at 240:22-24.

B. The Concept Design Letter Agreement

13. AOS and Mr. Blumenthal previously had worked together on the development of the Met. Tr. 4/16/24, Schade at 36:12-16.

14. After the conclusion of that project, Mr. Olshin and Mr. Blumenthal “were talking and doodling” about the development of other properties Mr. Blumenthal owned on the North Broad Street corridor. *Id.* at 36:18-20.

15. This led to designs that AOS prepared without compensation, followed by a letter dated August 8, 2018, from AOS to EBRM proposing further concept design development at a fixed fee of \$30,000 plus expenses. P-6, (Email dated 9/12/18, attaching executed proposal dated 8/8/2018, with attachments (the “Concept Design Letter Agreement”)).

16. Mr. Blumenthal signed the Concept Design Letter Agreement on behalf of EBRM. *Id.*

17. AOS assigned each project, including the concept design project, a unique number that appeared on all invoices for that project. The number for the concept design project was 18270. Tr. 4/16/24, Schade at 49:6-11.

¹ Mr. Malagoli’s name is incorrectly spelled “Malagola” in the court transcript.

18. The Concept Design Letter Agreement stated that “following zoning approval, we can discuss and mutually agree to a lump sum proposal and subsume [AOS’s] hours to date into the lump sum fee.” *Id.* at 4.

19. AOS completed the work under the Concept Design Letter Agreement in accordance with the contract schedule. Tr. 4/15/24, Olshin at 151:22-152:4.

20. Domus paid AOS a total of \$56,759.67 for its work under the Concept Design Letter Agreement: \$32,660.68 for AOS and \$24,092.99 for other reimbursable costs. P-8 (Invoices/Payments); Tr. 4/17/24, Blumenfeld at 105:16-18.

C. The Full Services Contract

21. Six months later, Mr. Olshin sent Mr. Blumenthal a Proposal for Architectural Services dated February 14, 2019, based on an approved concept design for a mixed-use building with one floor of retail space, five floors of health club and 24 floors of residential apartments. P-1 (Proposal for Architectural Services dated February 14, 2019).

22. After the concept design stage, the schematic design phase of Mural West started with a kick-off meeting in February 2019. Tr. 4/16/24, testimony of Mason Lehman (“Lehman”) at 130:13-17²; Tr. 4/17/24, Blumenfeld at 66:1-3; P-18 (Email from Lehman to EBRM and Domus, dated 2/19/2019 re: Mural West – Kickoff Meeting Design Concept Packet, attaching 2019 0219_Mural West Concept Design Packet.pdf.

23. At the kick-off meeting, Domus agreed to pay \$300,000 in “seed money” to start the Mural West project. Tr. 4/15/24, Olshin at 132:1-16, 268:19-23, 269:13-16; 4/16/24, Malagoli at 11-25.

² Mr. Lehman worked for AOS as the project architect on the Mural West project. Tr. 4/15/24, Schade, at 77:1-8.

24. After fee negotiations, on February 28, 2019, Sam Olshin sent Eric Blumenfeld a Proposal for Architectural Services – Revised (the “Full Services Contract”), which Mr. Blumenfeld signed on March 7, 2019, as an authorized representative for EBRM. P-2 (Full Services Contract); Tr. 4/17/24, Blumenfeld at 38:4-7, 79:5-7.

25. The contract was based upon an “approved Concept Design dated January 21, 2019.” P-2 (Full Services Contract) at 1; Tr. 4/15/24, Schade at 39:2-5.

26. The Full Services Contract was assigned a unique project number, 182701, that was different from the concept design project. Tr. 4/16/24, Schade at 49:12-15, 75:13-18.

27. The Full Services Contract “combines and supersedes previous letter proposals, email exchanges, and verbal discussions regarding the scope of services and related fees.” P-2 (Full Services Contract) at 1.

28. The contract is a fixed-fee, lump-sum contract. *Id.*; Tr. 4/15/24, Olshin at 277:21-24; Tr. 4/17/24, Blumenfeld at 79:12-15.

29. The Full Services Contract divided the stages of Mural West’s construction into multiple bid packages. P.-2 (Full Services Contract) at 3.

30. It outlined the following fees for each bid package:

Bid Package 1- Foundations & 90% Schematic Design	\$300,000
Bid Package 2- Core, Shell, Apartments	
Schematic Design	\$85,000
Design Development	\$428,000
Construction Documents	\$661,500
Bidding & Permitting	\$38,500
Construction Administration (consultants)	\$166,250
Construction Administration (AOS not-to-exceed)	\$105,000
Bid Package 3- Life Style Fitness or similar tenant	\$135,000
Bid Package 4- Tenant Space A	\$25,000
Bid Package 5- Tenant Space B	\$15,000

Id.

31. Under the Full Services Contract, AOS would invoice EBRM monthly for the percentage of work completed that month. P-2 (Full Services Contract) at 5; Tr. 4/15/24, Schade at 74:14-18.

32. Payment on invoices was due within 45 days and amounts not paid within 60 days were subject to a nine percent per annum interest charge. P-2 (Full Services Contract) at 5.

33. The Full Services contract set the following target schedule:

2/15-4/15/2019: Schematic Design, Civic Design Review, Foundation Package Design & Documentation
4/15/19: Foundation Package Construction Documents complete
5/15-6/1/2019: ZBA Hearing and Updated Construction Cost Estimate
6/1-6/20/2019: Obtain Zoning Permit, Submit for Foundation Permit
7/1-9/30/2019: Complete core, shell and apartment unit Construction Documents
7/15-7/31/2019: Foundation Construction Starts
10/1/2019: Submit for Core and Shell Building Permit
10/1-12/1/2019: Complete retail tenant fit-out Construction Documents
2/1/2021: Construction Complete

Id. at 3.

34. It also stated, however, that AOS “has no control of the schedules of the Owner’s own consultants, Construction Manager’s design/build vendors, authorities have jurisdiction, nor the construction schedule.” *Id.*; Tr. 4/15/24, Schade at 66:7-9.

35. The contract could be “cancell[ed] with 45 days’ notice” and EBRM would be “responsible to reimburse” AOS for “all fees and expenses incurred to date of said notice.” P-2 (Full Services Contract) at 6.

D. AOS Submits Multiple Key Work Products

36. AOS submitted “50 or so” deliverables under Bid Package 1 and a portion of Bid Package 2 to EBRM and Domus during the pre-construction phase of Mural West. Tr. 4/15/24, Schade at 76:18-21; Tr. 4/15/24, Olshin at 127:12-17; *see* P-14 (Mural West Foundation Permit Set (8/8/2019)); P-15 (Mural West Schematic Designs Progress Set (5/21/2019)); P-16 (Mural

West Floor Plan Set (10/14/2019)); P-17 (Mural West Civic Design Review and Approved Zoning Permit Package); P-26-7 (Email from Mason Lehman to Domus, dated 4/25/2019, re: Mural West – Updated Pricing Drawings, attaching 2019 0425_MURAL WEST_PROGRESS PRICING SET.pdf); P-35-7 (Email from Mason Lehman to Domus, dated June 10, 2019, RE: Mural West – Foundation Package, attaching: 2019 0610_MURAL WEST_FOUNDATION PACKAGE DRAWINGS.pdf; 2019 0610_MURAL WEST_FOUNDATION PACKAGE SPECIFICATIONS.pdf).

37. AOS's work product also was submitted for review to the Civic Design Review ("CDR"), a group of design professionals that gives nonbinding feedback to projects. P-17 (Mural West Civic Design Review and Approved Zoning Permit Package) at 5; P-44 (Email dated 7/12/2019 from City of Philadelphia to Project Team re: Approval of Zoning Variance From CDR, including attachments) at 2; Tr. 4/16/24, Lehman at 18:16-19; Tr. 4/15/24, Olshin at 182:3-8.

38. Until November 25, 2020, AOS received no complaints about the timing or quality of its work product from either Domus or EBRM. Tr. 4/16/24, Lehman at 138:8-10; Tr. 4/15/24, Schade at 87:9-15.

E. Uncontrollable Factors Delay Mural West

39. Mural West did not meet several targets on its planned schedule because of subcontractors' late work, government delays, and frequent changes to the building's design.

1. Subcontractors delay AOS's work for a foundation permit

40. AOS hired subcontractors, including structural engineer Harmon Group. Tr. 4/15/24, Olshin at 191:25-192:1.

41. AOS needed “four to five weeks after preliminary information is gathered” by its subcontractors to compile work product to apply for a foundation permit. Tr. 4/15/24, Olshin at 191:6-10; P-161 (Domus Meeting Minutes for Mural West); Tr. 4/17/24, Blumenfeld at 73:5-9.

42. The Harmon Group could not complete its work without receiving a report on geotechnical borings, or data that helps determine the amount of excavation needed for construction, from third party Underwood (“UEI”). Tr. 4/15/24, Olshin at 191:14-25.; Tr. 4/16/24, Malagoli at 292:24-293:5.

43. The geotechnical borings report was not completed and distributed until May 2, 2019, two weeks after the target schedule in the contract. Tr. 4/15/24, Olshin at 195:8-11; P-161 (Domus Meeting Minutes for Mural West) at 22.

44. Thus, AOS was unable to submit its application for a foundation permit until June 10, 2019. P-47-50 (Mural West_Act 537 Approval.pdf; Mural West_Foundation Permit Drawing Set.pdf; Mural West_Special Inspections Form.pdf; Mural West_Structural Design Criteria Form.pdf; image001.jpg); Tr. 4/16/24, Lehman at 143:8-14; P-35-37 (Email from Mason Lehman to Domus, dated June 10, 2019, RE: Mural West – Foundation Package, attaching: 2019 0610_MURAL WEST_FOUNDATION PACKAGE DRAWINGS.pdf; 2019 0610_MURAL WEST_FOUNDATION PACKAGE SPECIFICATIONS.pdf); P-46-50 (Email from Mason Lehman to Domus, dated August 15, 2019, RE: Mural West – Foundation Permit, attaching: Mural West_Act 537 Approval.pdf; Mural West_Foundation Permit Drawing Set.pdf; Mural West_Special Inspections Form.pdf; Mural West_Structural Design Criteria Form.pdf; image001.jpg); Tr. 4/16/24, Lehman at 143:8-14.

2. Zoning permit delayed because of the ZBA

45. EBRM applied for a zoning permit for Mural West, which was denied on April 24, 2019. P-24 (Email from Kevin McCarthy to Sam Olshin and EBRM, dated 4/24/2019 re: FW: Zoning App. #936019 Rereview, attaching 936019_REFUSAL.pdf).

46. EBRM then applied for a zoning variance. Tr. 4/16/24, Lehman at 134:3-9.

47. The ZBA scheduled the hearing on the variance on June 26, 2019, and the application was approved August 14, 2019. P-162 (NOTICE OF DECISION; City of Philadelphia Zoning Board of Adjusted; Application #936019; Date of Decision: 8/14/19; CAL #: 37338); Tr. 4/15/24, Olshin at 184:19-24.

48. AOS had no control over the timing of the ZBA hearing. Tr. 4/16/24, Lehman at 134:16-25.

49. The zoning permit was issued on December 17, 2019. P-17 (Mural West Civic Design Review and Approved Zoning Permit Package); Tr. 4/16/24, Lehman at 168:7-9.

50. EBRM principal Eric Blumenfeld admitted that the zoning approval was “absolutely” based on AOS’s work. Tr. 4/17/24, Blumenfeld at 88:13-16.

3. Frequent design changes paralyze construction progress

51. Throughout the design process, Mr. Blumenfeld frequently demanded significant changes that he said were necessary to secure financing, appease investors, and decrease the cost of construction. Tr. 4/16/24, Malagoli at 209:21-23; Tr. 4/15/24, Olshin at 213:23-25; Tr. 4/16/24, Lehman at 146:20-22.

52. These changes included eliminating floors and units and expanding commercial space into the second and third floor of the building. Tr. 4/16/24, Malagoli at 200:1-5; P-104

(Email dated 8/28/2019 from Mason Lehman to Anthony Kennedy re: Mural West - 2 Updated Options); Tr. 4/15/24, Olshin at 197: 22-198:2.

53. As a result of Mr. Blumenthal's demands, AOS had to constantly revise its drawings and documents because conceptual changes were made to the "base of the building, the core layout, the structural systems, the mechanical systems, . . . and the zoning application that was pending at the time." Tr. 4/16/24, Lehman at 145:14-21; Tr. 4/15/24, Olshin at 171:10-12, 211:11-13; Pl-51 (Email from Mason Lehman to Domus, cc'ing EBRM, dated August 27, 2019, RE: Mural West - Revised Scheme Plans, attaching 2019 0827 _Mural West_Revised Lower Floor Data.pdf; 2019 0827 _Mural West_Revised Lower Floors.pdf); Pl- 54 (Email from Mason Lehman to Domus, cc'ing EBRM, dated August 28, 2019, RE: Mural West - 2 Updated Options, attaching: 2019 0828 _Mural West_Add Commercial Data.pdf; 2019 0828 _Mural West_Add Commercial Plans.pdf; 2019 0828 _Mural West_Shorter Building Data.pdf; 2019 0828 _Mural West_Shorter Building Plans.pdf); P- 60 (Email from Mason Lehman to Domus, cc'ing EBRM, dated August 30, 2019, RE: Mural West – Floor Plans and floor data, attaching: 2019 0830 _Mural West_Mixed Income Bonus.pdf; 2019 0830 _Mural West_Mixed Income Bonus Data.pdf; image001.png).

54. Mr. Blumenfeld's design changes inhibited the issuance of a foundation permit for Mural West. Tr. 4/16/24, Lehman at 165:15-21.

55. AOS's work product was used to apply for a foundation permit with the City of Philadelphia. Tr. 4/17/24, Blumenfeld at 72:1-8, 22-24; P-33-4 (Email from AOS Architects to Domus, dated 5/21/2019, re: Mural West Progress Set, attaching 182700 _EBRM Mural West_Foundations Progress Set_2019.0521.pdf); D-5 (Email by Joe Gallagher with Mural West Tower Progress Set dated May 21, 2019); Tr. 4/15/24, Olshin at 137:11-16.

56. While “the foundation design for the building was completely engineered and ready to go,” the City of Philadelphia required a traffic study before it would issue the permit. Tr. 4/15/24, Olshin at 176:4-13; Tr. 4/16/24, Lehman at 143:23-25.

57. Mural West’s civil engineer, Bohler Engineering (“Bohler”), oversaw the traffic study. Tr. 4/16/24, Lehman at 144:10-16.

58. A traffic study was never completed. Tr. 4/16/24, Lehman at 144:17-18.

59. This was because EBRM’s constant changes to the commercial tenants on the ground floor of the building made it difficult for a traffic study to be completed. Tr. 4/16/24, Lehman at 144:19-145:7; Tr. 4/15/24, Olshin at 170:22-25, 199:17-20.

60. Bohler also did not complete the study because EBRM had not paid it. Tr. 4/16/24, Lehman at 144:4-9, 11-13; Tr. 4/16/24, Malagoli at 193:25-194:1; Tr. 4/16/24, Lehman at 168:19-21; P-92 (Email dated 4/22/2019 from Eric Blumenfeld to Sam Olshin re: Mural West - three items).

F. Mural West on Pause

61. In June 2019, Mural West lacked financing beyond the \$300,000 that Domus had provided. Tr. 4/17/24, Malagoli at 292:3-4, 231:19-25, 249:2-6; Tr. 4/15/24, Olshin at 270:13-15; P-96 (Email dated 6/26/2019 from Bob Malagoli to Bill Procida re: Mural West Funding).

62. The lack of funding “jeopard[ized]” Mural West’s “targeted milestones.” P-96 (Email dated 6/26/2019 from Bob Malagoli to Bill Procida re: Mural West Funding).

63. As of September 6, 2019, the building was “in a pause mode” because EBRM and Mr. Blumenthal had not made decisions about “a swimming pool, tenant choices, number of units per floor, et cetera, number of floors.” Tr. 4/15/24, Olshin at 205:2-7; P-107 (Email dated 9/6/2019 from Sam Olshin to Joe Gallagher re: Mural West Concrete Submittals).

64. Despite this, AOS continued to communicate with EBRM and to send it alternate sketches of Mural West throughout October 2019. Tr. 4/16/24, Malagoli at 198:22-24; P-65 (Email from Mason Lehman to EBRM, cc'ing Domus, dated October 8, 2019, RE: Mural West - Commercial Floors, attaching: 2019 1008_Mural West_Monkfish Club Sketch with Notes.pdf); P-71 (Email from Mason Lehman to EBRM, dated October 16, 2019, RE: Mural West – Updated Plans and SF Data, attaching: 2018 0906_Mural West_Pool Sketch.pdf; 2019 1016_Mural West_Gym Floor Plans.pdf); P-75 (Email from Peter Kelsen to EBRM, dated December 17, 2019, RE: 523 N. Broad St. Z+U Permit 936019 and Approved Plans, attaching 523 N. Broad St Z+U PERMIT 936019121719-155455.pdf; 523 N Broad No. 936019 Approved Plans.pdf); D-7 (Email with Mural West Updated Plans & SF Data dated October 14 and 16, 2019).

65. On November 19, 2019, AOS's principal emailed Domus for a status update on Mural West because there was "no word [from Mr. Blumenfeld]. . . despite text and phone requests for a conference call." P-115 (Email dated 11/19/2019 from Bob Malagoli to Sam Olshin re: Mural West).

66. Mr. Malagoli responded that "nothing had changed" and that the project could not move forward because there was no funding. P-115 (Email dated 11/19/2019 from Bob Malagoli to Sam Olshin re: Mural West); Tr. 4/16/24, Malagoli at 262:4-12.

67. Despite AOS's desire to move forward on the Mural West project, no work was done throughout 2020. Tr. 4/16/24, Lehman at 154:1-18; Tr. 4/15/24, Olshin at 172:17-174:4.

68. Mr. Blumenfeld was unresponsive to AOS's communications in December 2019 because he was in a "very bad car accident." Tr. 4/16/24, Lehman at 154:7-18; Tr. 4/15/24, Olshin at 172:17-174:4. Later that month, EBRM Vice President Chris Corado emailed AOS that

EBRM was waiting to secure important tenants and financing before moving forward with Mural West. P-119 (Email dated 12/30/2019 from Sam Olshin to Chris Corado re: Mural West/2020).

69. Mural West was further halted in 2020 because the COVID-19 pandemic shut various government agencies in the City of Philadelphia and delayed important third-party construction financing. Tr. 4/16/24, Lehman at 154:7-18; 155:2-4; Tr. 4/17/24, Blumenfeld at 59:13-19.

G. AOS was Not Paid for Invoices Under the Full Services Contract

70. From May to September 2019, AOS sent EBRM monthly invoices totaling \$300,000 for Bid Package 1 and \$85,000 for the remainder of schematic design under Bid Package 2. Tr. 4/15/24, Schade at 76:20-23; P-8 (Invoices/Payments) at 13, 20; P-9 (AOS Invoice #190162, #190307, #190432, #190519, #190626, #190734, #190818).

71. EBRM paid only two invoices under the Full Services Contract for \$61,130.54 and \$90,777.72 in May 2019. Tr. 4/15/24, Schade at 73:8-23; Tr. 4/15/24, Schade at 75:2-8; P-8 (Invoices/Payments) at 13, 20; P-9 (AOS Invoice #190162, #190307, #190432, #190519, #190626, #190734, #190818).

72. \$232,911.74 remains outstanding for invoices issued from May 9, 2019, to September 12, 2019. Tr. 4/15/24, Schade at 76:4-9; P-9 (AOS Invoice #190162, #190307, #190432, #190519, #190626, #190734, #190818) at 1-5.

73. Until November 25, 2020, AOS never received any communication from EBRM or DOMUS that it was not entitled to payment. Tr. 4/15/24, Olshin at 7-14.

74. When AOS attempted to contact EBRM and Domus about the lack of payment, they received assurances that the payments were "coming." Tr. 4/15/24, Olshin at 157:5-14; P-99

(Email dated 7/18/2019 from Sam Olshin to Eric Blumenfeld re: Mural West – invoicing, with attachments).

75. On June 12, 2019, Mr. Olshin sent an email to Mr. Malagoli and an EBRM employee about outstanding payments due and their continuing desire to “extend credit” to EBRM:

Our understanding and our agreement is that the Phase I Foundation package/early [schematic design] phase per our contract is \$300k fee. We don’t care who pays it although we understand Domus would, but that is between you two. The second phase for \$85k for finishing SD, which we are working on now, AOS did agree a few weeks ago in Eric’s office that we would assume that risk with the understanding that money would flow again in late July when ideally we received zoning. We all want to keep this project moving. Please confirm so that we are all on the same page. Thanks!

D-3 (Emails Bob Malagoli to Sam Olshin et al. dated June 12-13, 2019); ” Tr. 4/15/24, Olshin at 266:19-22.

76. Mr. Malagoli responded that Domus would make no further payments:

You have received all you will get from Domus. I spoke to Sam [Olshin] and Eric [Blumenfeld] about this about three weeks ago. You need to adjust your receivables to be paid by EBRM moving forward. There is no need to copy me on future emails pertaining to payments due to AOS from EBRM.

Id.

H. Attempting to Restart the Project

77. Because of the “lull in time and because of interest in [Mural West]”, AOS emailed Mr. Blumenfeld and EBRM a sketch of a “reduced 24-story scheme that includes one story of retail, two stories of extended-stay, and 21 stories of apartments above” to “move[.] the project forward” without additional charge on March 20, 2020. Tr. 4/15/24, Olshin at 211:21-212:3; P-78 (Email from AOS Architects to EBRM and Domus, dated 3/20/2020, re: Mural West_24 Story Sketch) at 1.

78. On October 1, 2020, Domus called a meeting among AOS, EBRM, and some subconsultants to “get everyone back together, get an update on the project and move things forward.” Tr. 4/16/24, Lehman at 155:11-13, 160:2-9; Tr. 4/16/24, Malagoli at 202:6-8.

79. At the beginning of the meeting, Mr. Blumenfeld introduced a “whole new idea” for Mural West. Tr. 4/15/24, Olshin at 231:2-5, Tr. 4/16/24, Lehman at 156:1-6.

80. In response, Mr. Olshin expressed enthusiasm to help but requested compensation for outstanding unpaid invoices, which had not been paid in 15 months, before undertaking any further work. Tr. 4/15/24, Olshin at 231:9-13, 14-16, Tr. 4/16/24, Lehman at 156:8-12.

81. Mr. Blumenfeld responded, “[t]here is no way am I paying you that kind of money.” Tr. 4/15/24, Olshin at 231:18-232:3.

82. Mr. Blumenfeld also “lost his temper and told Mr. Olshin to get the f--- out.” Tr. 4/16/24, Malagoli at 202:9-14, 205:7-12; *see* Tr. 4/17/24, Blumenfeld at 28:3-9; Tr. 4/15/24, Olshin at 232:6-8, Tr. 4/16/24, Lehman at 156:1-19.

83. Mr. Olshin and Mr. Lehman were “unable to continue talking about the project” because of Mr. Blumenfeld’s outburst and left the meeting. Tr. 4/16/24, Lehman at 156:16-19; Tr. 4/15/24, Olshin at 232:23-233:4.

84. As the parties were leaving, Mr. Blumenfeld “yelled at [Mr. Olshin] and asked him to fire [Mr. Lehman] so that [Mr. Lehman] could stay on and continue working on the project directly for him.” Tr. 4/16/24, Lehman at 157:1-4, Tr. 4/15/24, Olshin at 232:9-13.

85. The meeting ended shortly after Mr. Olshin and Mr. Lehman left. Tr. 4/15/24, Olshin at 233:3-4.

I. After the October 1 Meeting

86. AOS never sent a notice to cancel the Full Services Contract after the October 1 meeting. Tr. 4/15/24, Olshin at 233:6-9.

87. In fact, Mr. Olshin sent a text message on October 9 to Mr. Blumenfeld and Mr. Corado to “set up a call . . . to discuss how [they could] keep [the] relationship / project moving forward to mutual agreement.” P-164 (Mural West Text Exchanges between Chris Corado, Sam Olshin and Eric Blumenfeld); Tr. 4/15/24, Olshin at 234:18-235:2.

88. Neither Mr. Blumenfeld nor Mr. Corado responded to the text. P-164 (Mural West Text Exchanges between Chris Corado, Sam Olshin and Eric Blumenfeld); Tr. 4/15/24, Olshin at 235:3-5.

89. AOS never received any notice from EBRM about terminating or cancelling the contract. Tr. 4/15/24, Olshin at 68:9-12; Tr. 4/17/24, Blumenfeld at 88:17-21.

90. In October 2020, however, EBRM hired a replacement architect, J. Davis, to continue working on a new 33-story design of Mural West. Tr. 4/17/24, Blumenfeld at 55:4-9; Tr. 4/16/24, Malagoli at 207:17-19; Tr. 4/15/24, Schade at 109:4-12.

91. J. Davis received and used AOS’s work product. Tr. 4/16/24, Malagoli at 268:8-15, 269:8-13, 283:21-23; P-142 (Email dated 12/4/2020 from Chris Cordaro to Neil Gray re: Mural West - Fully Executed - 2 attachments-Proposal for Multidisciplinary Design Services and J. Davis letter dated 11/5/2020 to Eric Blumenfeld re: Mural West Copyright Indemnity) at 19; P-143 (Email chain between Domus and JDAVIS, dated December 29, 2020, RE: Mural West Meetings) at 1.

92. J. Davis’s contract specified that it was “at risk” for \$103,705 during the Schematic Design Phase. P-142 (Email dated 12/4/2020 from Chris Cordaro to Neil Gray re:

Mural West - Fully Executed - 2 attachments-Proposal for Multidisciplinary Design Services and J. Davis letter dated 11/5/2020 to Eric Blumenfeld re: Mural West Copyright Indemnity) at 13; Tr. 4/16/24, Malagoli at 273:18-274:1.

93. On October 20, 2020, AOS sent a demand letter to EBRM seeking payment of \$243,940.29 in outstanding invoices and \$25,802.05 in interest by October 30, 2020. P-140 (Demand letter dated 10/20/2020 from counsel for AOS Architects to EBRM re: Proposed Development Project at 532 N. Broad Street aka "Mural West" (with attachments)).

94. Mr. Olshin sent two more text messages to Mr. Blumenfeld and Mr. Corado on October 30, to which neither party responded. P-164 (Mural West Text Exchanges between Chris Corado, Sam Olshin and Eric Blumenfeld).

95. On November 25, 2020, EBRM sent a response letter, claiming that AOS was not entitled to payment because it "furnished minimal services" and had quit the job after the October 1 meeting. D-1 (Letter from B. Garber to T. Grieco dated November 25, 2020).

J. Lost Profits

96. At trial, AOS presented testimony from Michael Strogoff, a licensed architect and a Fellow of the American Institute of Architects. Tr. 4/16/24, Michael Strogoff Testimony ("Strogoff") at 52:22-53:9.

97. Mr. Strogoff was qualified as an expert in "architectural practice, management, including profitability." *Id.* at 71:22-25.

98. Mr. Strogoff opined that an estimated profit margin for a project like Mural West was between 15-18 percent, or \$187,000 to \$225,000. *Id.* at 73:10-74:1, 85:22-25.

99. He based his opinions only on AOS's proposal and concept design. *Id.* at 99:13-17.

K. Procedural History

100. AOS initiated the matter now before this Court by filing a complaint for breach of contract and unjust enrichment on February 23, 2021. Complaint, Trial Court Docket (“Dkt.”) at 02/23/21.

101. EBRM answered the complaint, denying all material allegations, and filed counterclaims for \$14 million on grounds of breach of contract, unjust enrichment, and tortious interference. Answer, Dkt. at 03/25/21.

102. The Court granted summary judgment to AOS on EBRM’s counterclaims and dismissed them on June 30, 2023. Order and Opinion for Summary Judgment, Dkt. at 06/30/23.

103. The Court also denied EBRM’s motion for partial summary judgment on AOS’s lost profits claim. *Id.*

104. The Court held a bench trial on the matter on April 15, 16, and 17, 2024.

CONCLUSIONS OF LAW

A. EBRM Breached the Full Services Agreement

105. The elements of a breach of contract require “(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) (quoting *Williams v. Nationwide Mut. Ins. Co.*, 750 A.2d 881, 884 (Pa. Super. 2000)).

1. The Full Services Contract legally bound EBRM

106. EBRM’s principal Eric Blumenfeld admitted that he signed the Full Services Contract. Tr. 4/17/24, Blumenfeld at 79:1-7.

107. The Full Services Contract contained all the essential terms to create a contract, including AOS’s scope of work, the fees for each bid package and due dates for invoices. The

contract provided that AOS would send monthly invoices to EBRM for the percentage of services performed to date and those invoices would be due within 45 days. Further, amounts not paid within 60 days were subject to a nine percent interest charge. P-2 (Full Services Contract).

108. The Court therefore concludes that the Full Services Contract is a valid and binding agreement.

2. EBRM breached the Full Services Contract

109. The Full Services Contract requires a party seeking to cancel the contract to provide 45 days' notice. P- 2 (Full Services Contract) at 6.

110. There is no evidence to support that AOS cancelled the contract. To the contrary, even after Mr. Blumenfeld stated at the October 1, 2020, meeting that EBRM would not pay the outstanding amounts due to AOS, AOS principal Sam Olshin sent a text message on October 9 to Mr. Blumenfeld and EBRM's Vice President Chirs Corado to "set up a call . . . to discuss how [they could] keep [the] relationship / project moving forward to mutual agreement." P-164 (Mural West Text Exchanges between Chris Corado, Sam Olshin and Eric Blumenfeld); Tr. 4/15/24, Olshin at 234:18-235:2.

111. AOS performed the work required by the Full Services Contract for Bid Package 1 and the schematic design portion of Bid Package 2, including submitting multiple design packages, attending meetings, and hiring subcontractors. Tr. 4/16/24, Lehman at 137:4-10; Pl. Ex. 27 (Attachments to P-26); Tr. 4/16/24, Lehman at 18:16-19; P-17 (Mural West Civic Design Review and Approved Zoning Permit Package) at 5; Tr. 4/15/24, Olshin at 182:3-8; *id.* at 137:11-16; P-34 (Attachments to P 33); Tr. 4/15/24, Olshin at 191:25-192:1.

112. EBRM benefitted from AOS's work product. Tr. 4/17/24, Blumenfeld at 72:3-8, 22-24 and 88:13-16.

113. AOS received no complaints about the timing or quality of its work product until late 2020. Tr. 4/16/24, Lehman at 140:1-3; Tr. 4/16/24, Lehman at 138:8-10; Tr. 4/15/24, Schade at 87:9-18.

114. Further, Judge Nina Wright Padilla, who presided over this case until November 2023, expressly rejected EBRM's argument for summary judgment that AOS breached the Full Services Contract with defective or untimely work:

While it appears there was a short delay by Plaintiff in Summer 2019, this delay was not commented on at the time, does not seem to have materially altered the timetable, and has nothing to do with the other factors that kept the project delayed for more than a year until it picked up again in October 2020. . . Defendant's claim that Plaintiff submitted substandard or unapproved work suffers from a similar defect. Again, no emails, letters, meeting minutes, etc. have been produced to substantiate this claim. There are no invoices for repairs or changes that had to be made, or any specific discussion in the record of what was allegedly substandard or deficient about Plaintiff's work.

Order and Opinion for Summary Judgment, Dkt. at 06/30/23 at 5-6.

115. AOS sent timely monthly invoices for its work to EBRM totaling \$385,000. Tr. 4/15/24, Schade at 76:20-23; P-8 (Invoices/Payments) at 13, 20; P-9 (AOS Invoice #190162, #190307, #190432, #190519, #190626, #190734, #190818).

116. Because AOS performed under the contract, EBRM had a duty to timely pay AOS's invoices or be charged interest at nine percent per annum after 60 days. P-2 (Full Services Contract) at 5.

117. EBRM breached the Full Services Contract by failing to pay the outstanding invoices. Tr. 4/15/24, Schade at 76:4-9; P-9 (AOS Invoice #190162, #190307, #190432, #190519, #190626, #190734, #190818) at 1-5.

3. AOS incurred damages as a result of EBRM's breach³

118. For breach of contract cases, Pennsylvania courts generally award compensatory damages that aim to "return the parties to the position they would have been but for the breach." *Birth Center v. St. Paul Companies, Inc.*, 787 A.2d 376, 385 (Pa. 2001); *Shapiro v. Koenig Contracting, Inc.*, 2013 WL 11256793, at *9 (Pa. Super. 2013) (awarding a general contractor labor costs and other expenses that a homeowner did not pay because the general contractor would have earned the amount had the homeowner not breached the contract)⁴.

119. Had EBRM performed under the Full Services Contract, AOS would have received \$232,911.74, or the full amount due for their work. Tr. 4/15/24, Schade at 76:4-9; P-9 (AOS Invoice #190162, #190307, #190432, #190519, #190626, #190734, #190818) at 1-5.

120. Thus, the Court awards to AOS \$232,911.74 in compensatory damages. Tr. 4/15/24, Schade at 76:4-9; P-9 (AOS Invoice #190162, #190307, #190432, #190519, #190626, #190734, #190818) at 1-5.

B. AOS Did Not Agree to Limit its Compensation Under the Contract

1. The Full Services contract is unambiguous and the parol evidence bars any evidence that AOS agreed to limit its compensation

121. At trial, EBRM asserted that AOS was entitled to payment under the Full Services Contract only if EBRM had been able to finance the Mural West Project and it had gone forward. EBRM further asserted that AOS knowingly accepted this risk. Tr. 4/17/24, Blumenfeld at 21:2-22; EBRM Proposed Finding of Fact and Conclusions of Law, Dkt. at 7/12/24 at 15-16.

³ AOS also argued that it is entitled to interest, penalty interest and attorneys' fees under the Pennsylvania Contractor and Subcontractor Act. 73 Pa. Stat. and Cons. Stat. Ann. § 501 (West, Westlaw through 2025 Act 2). The Court will address these issues upon motions following the issuance of these findings and conclusions.

⁴ This is a non-precedential case cited for persuasive value.

122. Neither the law nor the facts support EBRM's assertion.

123. The parol evidence rule bars the admission of previous oral or written negotiations or agreements to explain or vary the terms of an unambiguous writing. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004).

124. A writing is the entire contract if the parties "deliberately put their engagements in writing" without fraud, accident, or mistake. *Yocca*, 854 A.2d at 436; *Gasbarre Products, Inc. v. Smith*, 270 A.3d 1209, 1220 (Pa. Super. 2022).

125. The Full Services Contract was the full agreement between AOS and EBRM because it expressly states that it "combines and supersedes" prior discussions or negotiations between the parties. P-2 (Full Services Contract) at 1.

126. Nowhere does the Full Services Contract state that EBRM would pay AOS only if the Mural West project received financing. *Id.*; Tr. 4/17/24, Blumenfeld at 79:16-80:1, 83:9-15.

127. Further, there is no evidence that AOS agreed to extend credit for fees paid for the Concept Design Letter Agreement.⁵

⁵ The Concept Design Letter Agreement provided that after zoning approval, "we can discuss and mutually agree to a lump sum proposal, and subsume our hours to date into the lump sum fee." P-6 (Concept Design Letter Agreement at p. 2). EBRM interprets the word "subsume" to mean that EBRM would receive credit under the Full Services Agreement for fees paid under the Concept Design Letter Agreement. EBRM Proposed Finding of Fact and Conclusions of Law, Dkt. at 7/12/24 at 2. This argument is meritless. First, the sentence EBRM relies upon does not grant a credit; it merely states that the parties "can discuss" such an arrangement in the future. Second, the Full Services Contract nowhere grants or even mentions a credit for past work. See P-2 (Full Services Contract). Third, the fact that there are two different project numbers for accounting purposes for each contract evinces that they are separate and independent contracts. Tr. 4/16/24, Schade at 49:12-15, 75:13-18. Finally, the Full Services Contract explicitly states that it "combines and supersedes our previous letter proposals, email exchanges, and verbal discussions regarding the scope of services and related fees for Mural West." P-2 (Full Services Contract). Therefore, the Full Services Contract supersedes the Concept Design Letter Agreement and provides no credit for prior work performed and paid for.

128. Thus, any prior oral or written communications to that effect are inadmissible to demonstrate that AOS agreed to limit its compensation.

2. Nor did the parties modify the Full Services Contract such that AOS was “at risk”

129. The parties may modify a contract only if there is “legally sufficient consideration, or a substitute therefor, and [if it] meets the requirements for contract formation.” *Shedden v. Anadarko E. & P. Co., L.P.*, 136 A.3d 485, 490 (Pa. 2016) (citing *Kreutzer v. Monterey Cty. Herald Co.*, 747 A.2d 358, 362 (Pa. 2000))

130. The burden of proving modification is on the party asserting the modification. *Trombetta v. Raymond James Financial Services, Inc.*, 907 A.2d 550, 558 (Pa. Super. 2006).

131. EBRM claims that AOS modified the contract to be “at risk” to forfeit payment for \$85,000 for the schematic design portion of Bid Package 2 if EBRM failed to obtain the necessary zoning variance for Mural West, D-3 (Emails Bob Malagoli to Sam Olshin, et al., dated June 12-13, 2019).

132. There is no evidence, however, of any consideration or consideration substitute passing from EBRM or AOS to support such a modification.

133. Further, as the email EBRM relies upon states and as Mr. Olshin credibly explained at trial, AOS was merely extending credit to EBRM for the \$85,000 until July 2019. *Id.*; Tr. 4/15/24, Olshin at 266:19-25 (“This is no different than anything we’ve been doing before, which is to extend credit, extend credit to Eric . . . There is nothing to say here specifically that we are assuming risk until he gets zoning.”)

134. The Court finds the testimony of Mr. Blumenthal and Mr. Malagoli to the contrary incredible.

135. Thus, the parties did not modify the contract such that AOS was “at risk” for \$85,000.

C. AOS is Not Entitled to Lost Profits

136. Proving entitlement to lost profits is “peculiar[ly] difficult.” *Bolus v. United Penn Bank*, 525 A.2d 1226 (Pa. Super. 1987).

137. Lost profits are recoverable in contract cases only if there is evidence to establish damages to a reasonable certainty, and to show they were proximately caused and reasonably foreseeable. *Birth Center v. St. Paul Co., Inc.*, 787 A.2d 376, 387–88 (Pa. 2001); *Bolus*, 525 A.2d at 1215.

138. In ascertaining whether lost profits are recoverable, a court may consider “evidence of past profits in an established business ..., profits made by others or by a similar contract, where the facts were not greatly different ..., and the evidence of experts if based on anything more than individual opinion or conjecture....” *Bolus*, 525 A.2d at 1226.

139. For example, in *Bolus v. United Penn Bank*, 525 A.2d 1215, 1222 (Pa. Super., 1987), the court affirmed a jury award for lost profits to a plaintiff truck repair business because an expert “adequately” demonstrated that the plaintiff lost past and future profits after a review of actual business records and general trucking industry profit data. *Bolus*, 525 A.2d at 1222.

140. In this case, AOS did not demonstrate that it is entitled to lost profits because it did not demonstrate that its lost profits were reasonably ascertainable.

141. AOS’s damages expert Michael Strogoff testified that the estimated profit margin for a project like Mural West was between 15-18 percent. Tr. 4/16/24, Strogoff at 71:22-25.

142. Mr. Strogoff’s testimony, however, is based only on his review of Mural West’s profitability. *Id.*

143. There is no evidence of architectural industry data or even of AOS's past profits that demonstrates a degree of reasonable certainty or foreseeability. *See Bolus*, 525 A.2d at 1226.

144. Thus, because AOS's lost profits for Mural West are not reasonably certain or foreseeable, it is not entitled to an award of lost profits.

CONCLUSION

145. For all the foregoing reasons, the Court finds for plaintiff Atkin Olshin Schade Architects, and against defendant EB Realty Management Corp. on its breach of contract claims in the amount of \$303,656.87 (\$243,940.29 contractual damages) plus interest at the annual rate of six percent accruing daily since February 23, 2021 (\$59,716.58 through 3/26/25).

146. The Court holds that the record evidence does not establish that AOS is entitled to lost profits.

BY THE COURT:

Asse F. R
ABBE F. FLETMAN, J.
3/26/25