

VENUE

3. Venue is proper in Camden County because defendant's registered office is located in Camden County and because it regularly conducts business in Camden County. See R. 4:3-2 (b).

STATEMENT OF FACTS

4. Auburn is a sole-purpose entity engaged in the development of certain commercial real estate known as the Woolwich Center, a shopping center located at Center Road and Auburn Road in Woolwich Township, New Jersey that includes 38,750 square feet of in-line retail space, as well as individual bank and restaurant pads.

5. According to its website, Alberto:

specializes in high-quality architecture, town planning, urban design, and redevelopment. [Alberto] has worked throughout the country on new traditional-styled buildings and master plans, as well as redevelopment plans for waterfronts, transit villages, hospital campuses, historic towns, and urban centers. The firm has successfully guided projects through all phases of design-from initial site planning, through approvals, construction documentation, and physical construction.

...

[Alberto] ... has a full understanding of the construction code and economic implications of wood, steel, and concrete construction.

See Website, attached as "Plaintiff's Exhibit A."

6. In addition to the representations made on its website, which were designed, in part, for potential clients to rely upon these statements, Alberto represented to Auburn that it had experience in the all areas necessary to perform all of the architectural, engineering, structural, electrical, and plumbing services required for the design and construction of the Woolwich Center, and led Auburn to believe that Alberto was capable of competently advising Auburn on all relevant issues relating to the Woolwich Center.

7. As a result of the foregoing representations, pursuant to a Proposal dated March 3, 2008, Auburn retained the services of Alberto to provide “Architectural, Structural, Electrical and Plumbing Engineering services for the proposed Woolwich Center retail buildings in Woolwich Township, NJ [which were being developed by Auburn]” See Proposal attached as “Plaintiff’s Exhibit B.”

8. Specifically, Alberto agreed to perform professional services for the following phases of the Woolwich Center project, in exchange for the payment of \$107,550.00, as well as certain reimbursable expenses:

- a. Schematic and Design Development;
- b. Construction Documents; and
- c. Limited Construction Administration.

See Plaintiff’s Exhibit B.

9. Indeed, according to its own website, Alberto provided “All Approvals, Schematic Design, Design Development, Full Construction Documents and Construction Administration” for the Woolwich Center project. See Plaintiff’s Exhibit A.

10. Unknown to Auburn until after the completion of the construction of the Woolwich Center project, however, Alberto committed a material error and/or omission with regard to the design stage of the project.

11. Specifically, Alberto failed to include energy calculations in the relevant plans for the Woolwich Center project which resulted in the project failing to meet efficiency standards.

12. As a result, Auburn was required to expend additional monies to install canopies above the storefronts of the Woolwich Center and for related expenses in order to bring the

project up to efficiency standards. See Estimate/Report from H. Carlson & Sons, Inc. (January 14, 2010), attached as “Plaintiff’s Exhibit C.”

13. In addition, Alberto’s failure to include energy calculations in the relevant plans for the Woolwich Center project also created a delay of nearly two (2) months which resulted in tenants not taking possession of their leased premises in a timely manner.

14. Had Alberto included the requisite energy calculations in the relevant plans for the Woolwich Center projects, Auburn would not have been required to incur additional costs relating to retrofitting canopies above the storefronts of the Woolwich Center and for related expenses in order to bring the buildings up to efficiency standards, and would not have experienced delay damages from lost rental income for a period of two (2) months.

COUNT ONE – NEGLIGENCE

15. The foregoing paragraphs are incorporated at length as if set forth fully herein.

16. Alberto owed a duty to Auburn to exercise ordinary care, skill, knowledge, and diligence required of professionals in its industry.

17. Alberto breached the foregoing duty by:

a. failing to exercise the ordinary care, skill, knowledge, and diligence required of a professional in its industry by failing to include energy calculations in the relevant plans for the Woolwich Center project;

b. breaching its fiduciary duty owed to Auburn; and

c. otherwise failing to protect the interests of Auburn.

18. As a direct and proximate result of the negligence and breach of fiduciary duty of Alberto, Auburn has been harmed and suffered damages in excess of \$250,000.00.

WHEREFORE, Auburn demands judgment in its favor against Alberto in an amount exceeding \$250,000.00, attorney's fees, pre- and post-judgment interest, delay damages, costs of suit, and such other legal and equitable relief as this Court deems just and proper.

COUNT TWO - BREACH OF CONTRACT

19. The foregoing paragraphs are incorporated at length as if set forth fully herein

20. The parties entered into an agreement whereby Alberto was to provide competent architectural and engineering services.

21. Auburn performed all of its duties under the agreement.

22. Alberto breached its duties under the agreement by failing to include energy calculations in the relevant plans for the Woolwich Center project which resulted in the project failing to meet efficiency standards.

23. As a result, Auburn has been harmed.

WHEREFORE, Auburn demands judgment in its favor against Alberto in an amount exceeding \$250,000.00, attorney's fees, pre- and post-judgment interest, delay damages, costs of suit, and such other legal and equitable relief as this Court deems just and proper.

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

Dated: July 15, 2010

By:  _____

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*Attorneys for Plaintiff Auburn Road
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JURY TRIAL DEMAND

PLEASE TAKE NOTICE that Plaintiff Auburn Road Associates, LLC demands a trial by jury as to all issues in the above matter.

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

Dated: July 15, 2010

By:  _____

Jeffrey P. Resnick, Esquire
Matthew A. Tucker, Esquire
*Attorneys for Plaintiff Auburn Road
Associates, LLC*

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies the following:

1. That, to the best of my knowledge and belief, this matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is there any such proceeding contemplated at this time.
2. That, to the best of my knowledge and belief, there are no other parties who must be joined in this action.

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

Dated: July 15, 2010

By:  _____

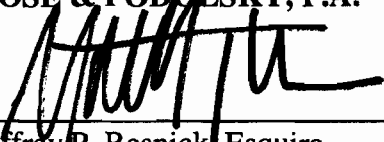
Jeffrey P. Resnick, Esquire
Matthew A. Tucker, Esquire
*Attorneys for Plaintiff Auburn Road
Associates, LLC*

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that, pursuant to R.4:25-4, Jeffrey P. Resnick, Esquire and Matthew A. Tucker, Esquire are hereby designated as trial counsel on behalf of Plaintiff Auburn Road Associates, LLC.

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

Dated: July 15, 2010

By: 

Jeffrey P. Resnick, Esquire
Matthew A. Tucker, Esquire
*Attorneys for Plaintiff Auburn Road
Associates, LLC*