

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Icona Golden Inn, LLC v. Struxure Outdoor, Inc. No. A-1073-23

Loss can be hard to define. As the old adage goes, you don't know what you got 'til it's gone. Adam Duritz was contemplating a couple of trees that got paved over for a parking lot when he wrote those immortal lines. That is, until he admits later in the song he was actually upset about the "big yellow taxi" his lover used to leave. Like I said, loss is hard to define. It took Mr. Duritz almost three minutes to tell us the real reason he was feeling blue. Sometimes in New Jersey courts when dealing with a construction dispute, it can take even more time to make your case on damages and ascertainable loss.

In this week's case, the Appellate Division reversed a lower court ruling that had dismissed a lawsuit by Icona Golden Inn, a beachfront hotel in Avalon. The hotel had accused Struxure Outdoor, Inc., the manufacturer of the Arcadia Louver Roof, and its installer, Post to Post LLC, of selling and installing a system that failed to perform as promised.

The hotel said it paid more than \$180,000 for the structure, marketed as able to withstand heavy snow and rain. But after its installation in June 2018, a "torrential downpour" left gutters overflowing and the system unable to handle the stormwater. The hotel claimed the malfunction undermined its use of an outdoor event space and saddled it with losses.

The trial court acknowledged that factual disputes existed but granted summary judgment for the defendants, finding the hotel had failed to demonstrate measurable damages. It also later awarded Post to Post more than \$146,000 in contract payments, interest and legal fees on its counterclaim.

The appellate judges disagreed. Viewing the evidence in the hotel's favor, they said a reasonable jury could conclude that Icona paid \$130,000 for a roof system that failed to function as advertised — an "ascertainable loss" under New Jersey's Consumer Fraud Act. That, the panel ruled, was enough to allow the case to move forward.

The decision vacates the judgments in favor of Post to Post and orders the case reassigned to a different trial judge on remand, given earlier credibility determinations made by the court in its bench trial that had followed the summary-judgment decisions.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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