

# The Appellate Advocate:

## A Recap of Recent Decisions by NJ's Appellate Courts



### **Sitnikov v. Lebedinsky** **A-1169-24**

There are things in life that are difficult to change. You want it to be one way. But it's the other way. Final judgments are just like that, which became very clear in this recent case.

*Sitnikov v. Lebedinsky* began with a homeowner, Andrej Sitnikov, who was undertaking a home-improvement project. Before placing an order, he specifically asked whether the windows he intended to purchase contained argon, a gas commonly used between panes to improve energy efficiency. According to the court record, the seller, Anatoli Vysotski, assured him that they did. Sitnikov then purchased twenty windows for more than \$6,700. After delivery, however, he discovered the windows lacked argon altogether. When confronted, Vysotski responded by email that the glass “didn't come with argon” and “wasn't priced for it.”

Sitnikov sued, alleging fraud, breach of contract, negligence, breach of warranty, and violations of New Jersey's Consumer Fraud Act. The defendants were served in early 2020, but procedural complications followed. Vysotski, acting without counsel, attempted to file an answer that was marked “received” by the court but apparently never formally filed. Years later, after no valid answer appeared in the record, the court entered default and scheduled a proof hearing.

At that hearing, the trial judge heard testimony and reviewed documentary evidence, including the parties' email exchanges. The court concluded that the defendants had made an affirmative misrepresentation about the windows and therefore violated the Consumer Fraud Act. The original purchase price was trebled, as permitted under the statute, resulting in a judgment of \$19,320. The court later awarded nearly \$8,000 in attorney's fees and costs.

The defendants sought to overturn the judgment, arguing that their failure to answer should be excused and that they possessed valid defenses. The trial court acknowledged that there may have been a credible explanation for the missed filing but found something more important lacking: a substantive defense to the fraud claim itself. The essential facts were not disputed. The seller had represented that the windows contained argon; the windows did not.

Writing for the appellate panel, the court agreed. The judges emphasized that a party seeking relief from a default judgment must generally show both excusable neglect and a meritorious defense. Even assuming the first requirement was satisfied, the second was not. The record showed that Vysotski had made the representation about argon-filled windows and later acknowledged that the windows lacked that feature. That, the court held, was enough to sustain liability under the Consumer Fraud Act.

The appellate judges were also unmoved by arguments that the judgment should be voided because of notice defects. The defendants had received multiple mailings throughout the litigation and appeared at the proof hearing itself. Nor did the court find the “exceptional circumstances” necessary to reopen the case under the catchall provisions of New Jersey's procedural rules.

### **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.



973-540-7333  
tjc@spsk.com

### **About Schenck Price**

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