

The Saiber Construction Law Column: April 2026

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To assert a claim for fraud in New Jersey, a plaintiff must show (1) a material misrepresentation of a presently existing or past fact, (2) knowledge or belief by the defendant of its falsity, (3) an intention that the other party rely on it, (4) reasonable reliance on it by the other party, and (5) resulting damages. On March 20, 2026, the Supreme Court of Alabama overturned a \$100,000 jury award entered against a construction company sued for fraud after determining the evidence presented at the trial was insufficient to establish fraud.

In *Hess v. Pecue*, a homeowner sued a construction company for fraud in connection with a pier replacement project which required the lumber used for the pier to be “treated lumber.” The homeowner subsequently determined that untreated lumber had been used at certain areas of the pier. Although the homeowner’s testimony focused on his belief that the construction company failed to adhere to the term of the contract and that he had to pay a second contractor to address issues the original contractor failed to fix and finish, the homeowner only filed a one-count complaint for fraud. The construction company appealed, arguing that the evidence presented at trial did not support a fraud claim.

On appeal, the Alabama Supreme Court reviewed the testimony presented at the trial. The Court also set forth the elements needed to establish a fraud claim in Alabama (which are the same as New Jersey’s.) The Court then held that the plaintiff failed to demonstrate any alleged misrepresentation by the construction company was material or proximity caused the homeowner’s damages. Rather, the evidence presented at trial showed deficient workmanship, but did not support a fraud claim.

New Jersey courts and Court Rules require a party to plead fraud with particularity when making a claim for fraud. It is necessary to provide detailed facts so the other party can understand the claim and respond appropriately. But, it is also critical that the plaintiff be able to establish those facts with proper evidence to prove a claim for fraud.

Each issue’s Saiber Construction Law Column will discuss a recent decision by New Jersey courts (or courts from other states) which may be of interest to people in the construction industry.

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The information in each article is not intended to be legal advice and may not be used as legal advice. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

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