The Saiber Construction Law Column: October/November 2026

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In 2021, the Supreme Court of New Jersey held that a contract is an "agreement resulting in an obligation enforceable at law." Previously, in 2016, the New Jersey Supreme Court stated that to prove a breach of contract, a party must prove four elements: the existence of a contract with definite terms; one party performed what the contract required; the other party failed to do what was required; and the failure to perform caused damages to the other party.

Recently, the Supreme Court of Wyoming in Lacher v. Case held that it is critical for a damaged party to prove its actual loss. In Lacher, a homeowner hired a contractor to build a wheelchair ramp and a covered addition to his home. The project ran into delays and other problems and the homeowner filed suit. The Wyoming court ultimately ruled in favor of the contractor, not because the project had gone well, but because the homeowner did not present enough evidence to prove what his actual damages were. Specifically, the homeowner failed to show either the cost to complete the project or the cost to correct construction defects. The court rejected the homeowner's claim that he was entitled to a full refund ($73,000) of what he paid for the project's work.

New Jersey Courts require not only that a party disclose its damages during the discovery phase of a lawsuit, but also that sufficient evidence of damages be presented at trial. Failing to establish the amount of damages with sufficient and admissible evidence could prevent an aggrieved party from obtaining a recovery in a breach of contract action.

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