



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**Cal-Am Properties, Inc. v. Edais Engineering, Inc.
CV-21-0129-PR**

PARTIES:

Petitioner: Cal-Am Properties, Inc. (“Cal-Am”)

Respondent: Edais Engineering, Inc. (“Edais”)

FACTS:

Cal-Am develops and operates RV and mobile-home resorts across the U.S. Cal-Am leased a resort in Yuma and hired a contractor to design and construct a concert hall there. The contractor hired Edais to survey the Yuma property to stake out the location for the new building. After the hall was built, Cal-Am discovered that Edais had staked the building in the wrong place, which meant that Cal-Am was unable to use a portion of the property. Edais conceded that it had improperly staked out the location of the hall.

Cal-Am sued Edais and argued, among other things, that Edais was negligent in staking the building. Edais moved for summary judgment, arguing that Cal-Am’s negligence claim failed because (1) Edais did not owe a duty to Cal-Am, and (2) Cal-Am was not entitled to any damages under Restatement (Second) of Torts § 324A because there had been no physical damage to the property. The trial court agreed with Edais finding that “Edais only owed a duty to prevent physical damage to the Property, and Cal-Am did not present evidence that physical damage occurred.” *Cal-Am Props., Inc. v. Edais Eng’g, Inc.* (“*Cal-Am*”), No. 1 CA-CV 20-0279, 2021 WL 1422738, at *1 ¶ 5 (Ariz. App. Apr. 15, 2021) (mem. decision). Cal-Am appealed.

As is relevant here, Cal-Am argued in the court of appeals that Edais owed a duty to Cal-Am under this Court’s decision in *Donnelly Construction Co. v. Oberg/Hunt/Gilleland* (“*Donnelly*”), 139 Ariz. 184 (1984). The court of appeals disagreed, stating that this Court’s later decisions in *Gipson v. Kasey*, 214 Ariz. 141 (2007), and *Quiroz v. Alcoa Inc.*, 243 Ariz. 560 (2018), had “rejected the foreseeability framework” that had been the basis for the duty in the *Donnelly* case.

The court of appeals also stated that the trial court had correctly relied on the Restatement § 324A to determine whether Edais could be liable to Cal-Am because Cal-Am leased the Yuma property and did not own it. Restatement § 324A creates a duty to protect others from “physical harm” and the court of appeals agreed that because Cal-Am did not establish any physical harm to the property, Edais “did not owe Cal-Am a duty to avoid purely economic harm.” *Cal-Am*, 2021 WL 1422738, at *3 ¶ 15. The court of appeals thus affirmed the trial court. Cal-Am then petitioned this Court for review, raising the issue listed below.

ISSUE:

This Court held in *Donnelly* that a design professional may be held liable in negligence for purely economic damages to those not in privity with it. The court of appeals, however, concluded that a design professional does not owe a duty as a matter of law to a party who suffers purely economic damages from the professional's negligence. Does this Court's holding—not its general analysis—in *Donnelly* remain good law?

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