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 § 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?