

Harris ruling a landmark in construction defect litigation

The Oregon Court of Appeals on Dec. 6 issued a significant ruling in the case of *Harris v. Suniga.*, which had posed an issue often raised in construction cases but on which Oregon law had been unclear: whether the “economic loss” doctrine bars a building owner from suing the general contractor or any of the subcontractors or suppliers for negligent construction.

The plaintiffs in *Harris* were the owners of an apartment complex for which the defendants had served as the general contractors. The plaintiffs, however, were not the original owners. After purchasing the buildings and discovering various defects that resulted in water damages, the plaintiffs filed a lawsuit. Because the plaintiffs were not parties to any contracts with the defendants, they could not

assert claims for breach of contract, and they therefore asserted claims for negligence.

The defendants argued



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that any claims for negligent construction were barred by the economic loss doctrine. The economic loss doctrine recognizes a distinction between, on the one hand, personal injury and property damages, and, on the other, damages that are purely economic in nature. Although Oregon law permits a plaintiff to recover personal injury and property damages under a negligence claim, the economic loss doctrine states that a defendant is not liable in negligence for purely economic damages.

The defendants in *Harris*

argued that the damages to the plaintiffs’ buildings were not personal injury or property damages but instead a reduction in the value of the plaintiffs’ investment. The defendants therefore insisted that, because the damages were purely economic in nature, they were barred by the economic loss doctrine.

The court of appeals disagreed with the defendants and ruled that the plaintiffs’ damages were property damages and not economic damages. As a result, the court concluded that the economic loss doctrine did not apply and that the plaintiffs were therefore free to pursue negligence claims against the defendants.

The economic loss doctrine typically arises only in those cases in which the plaintiff is seeking to sue a party with whom the plaintiff had no contractu-

al relationship, such as when a subsequent building owner is suing a general contractor or when a building owner is suing a subcontractor or supplier. When the plaintiff is a party to a contract with the defendant, the plaintiff can usually assert a claim for breach of contract and has no need to assert a negligence claim.

The *Harris* ruling opens the door to claims by a subsequent owner of a building against the general contractor and by either the original or any subsequent owners of a building against any subcontractors and suppliers. The implications of this ruling are significant for everyone involved in the real estate development and construction industries.

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