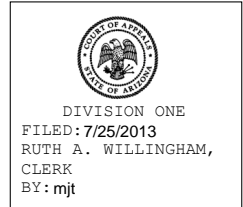


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c)



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

RUSSO AND STEELE, L.L.C., an	)	No. 1 CA-SA 13-0160
Arizona limited liability	)	
company,	)	DEPARTMENT D
	)	
Petitioner,	)	Maricopa County
	)	Superior Court
v.	)	Nos. CV2010-011542
	)	CV2010-012757
THE HONORABLE J. RICHARD GAMA,	)	CV2010-015105
Judge of the SUPERIOR COURT OF	)	CV2010-052812
THE STATE OF ARIZONA, in and for	)	CV2011-008605
the County of MARICOPA,	)	CV2011-010179
	)	CV2011-013784
Respondent Judge,	)	CV2011-095160
	)	CV2011-095290
TRI-RENTALS, INC., an Arizona	)	CV2011-003021
corporation; CLASSIC PARTY	)	CV2012-003048
RENTALS, INC., a California	)	
corporation,	)	<b>DECISION ORDER</b>
	)	
Real Parties in Interest.	)	
	)	

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The Court, Chief Judge Diane M. Johnsen, presiding, and Judges Randall M. Howe and John C. Gemmill, participating, has considered the petition of Russo and Steele, L.L.C., the response of Real Parties in Interest Tri-Rentals, Inc. and Classic Party Rentals, Inc., and Petitioner's Reply. The petition seeks relief from rulings by the superior court (1) granting Real Parties' motion for partial summary judgment and dismissing Petitioner's claims for negligence and gross

negligence and (2) denying Petitioner's motion for leave to amend its complaint.

For the reasons set forth herein,

**IT IS ORDERED** that the Court, in the exercise of its discretion, declines to exercise special action jurisdiction over the superior court's denial of Petitioner's motion for leave to amend the complaint.

**IT IS FURTHER ORDERED** that the Court, in the exercise of its discretion, accepts special action jurisdiction over the superior court's order granting Real Parties' motion for partial summary judgment, and grants the following specific relief: That portion of the order of the superior court, dated March 21, 2013 and filed March 26, 2013, that grants Real Parties' motion for partial summary judgment based on economic damages is vacated and Petitioner's negligence and gross negligence claims are reinstated.

We exercise our discretion to accept special action jurisdiction over the economic loss doctrine ruling because the issue presented is a pure issue of law, *see Orme Sch. v. Reeves*, 166 Ariz. 301, 303, 802 P.2d 1000, 1002 (1990), the facts necessary for resolution are not in serious dispute, *id.*, and because, given the procedural posture of the consolidated cases, judicial economy will be served by trying Petitioner's

negligence claims along with those of other parties, see *Grand v. Nacchio*, 214 Ariz. 9, 18, ¶ 24, 147 P.3d 763, 772 (App. 2006).

The superior court's economic loss doctrine ruling is an abuse of discretion because it is based on an error of law. See *Grand*, 214 Ariz. at 17, ¶ 21, 147 P.3d at 771. The ruling is not supported by Arizona case authority and conflicts with the following specific declarations of the Arizona Supreme Court in *Flagstaff Affordable Housing Ltd. Partnership v. Design Alliance, Inc.*, 223 Ariz. 320, 223 P.3d 664 (2010), regarding when the economic loss doctrine will apply and when it will not apply:

- "Today we apply the doctrine in a construction defect case and hold that a property owner is limited to its contractual remedies when an architect's negligent design causes economic loss *but no physical injury to persons or other property.*" *Id.* at 321, ¶ 1, 223 P.3d at 665 (emphasis added).
- "As explained below, we believe the economic loss doctrine is best directed to the first of these issues, and we use the phrase to refer to a common law rule limiting a contracting party to contractual remedies for the recovery of economic losses *unaccompanied by physical injury to persons or other property.*" *Id.* at 323, ¶ 12, 223 P.3d at 667 (emphasis added).
- "But if the parties do not provide otherwise in their contract, they will be limited to contractual remedies for any loss of the bargain resulting from construction defects *that do not cause personal injury or damage to other property.*" *Id.* at 326, ¶ 29, 223 P.3d at 670 (emphasis added).

- “The doctrine *does not bar tort recovery* when economic loss is *accompanied by physical injury to persons or other property.*” *Id.* at 327, ¶ 33, 223 P.3d at 671 (emphasis added).

Petitioner alleges it sustained damages of approximately \$87,000 in physical damage to its own property. In accordance with our Supreme Court’s clear guidance in *Flagstaff Affordable*, therefore, the economic loss doctrine does not bar its negligence or gross negligence claims.

\_\_\_\_\_/s/\_\_\_\_\_  
Diane M. Johnsen, Chief Judge