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Summary of Halcrow, Inc. v. Eighth Judicial Dist. Ct., 129 Nev. Adv. Op. 42

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Recommended Citation

Stephan, Sara, "Summary of Halcrow, Inc. v. Eighth Judicial Dist. Ct., 129 Nev. Adv. Op. 42" (2013). *Nevada Supreme Court Summaries*. 85.

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CONSTRUCTION DEFECT LAW–ECONOMIC LOSS DOCTRINE

Summary

The Court granted a petition for a writ of mandamus challenging a district court order granting real parties in interest’s motion for leave to amend their third- and fourth-party complaints to add a cause of action for negligent misrepresentation. The economic loss doctrine bars negligent misrepresentation claims against commercial construction design professionals where the recovery sought is solely for economic losses. Accordingly, the district court should have denied the motions to amend.

Disposition/Outcome

The Court held in commercial construction defect litigation, the economic loss doctrine applies to bar claims against design professionals for negligent misrepresentation where the damages alleged are purely economic. The Court issued a writ of mandamus directing the district court to vacate its order granting PCS and Century leave to amend their third- and fourth-party complaints and the amended complaints.

Factual and Procedural History

The Harmon Tower is a building located in CityCenter in Las Vegas. It is owned and was developed by MGM Mirage (“MGM”), who retained Perini Building Company (“Perini”) to assist in the development. Due to steel installation defects, construction of the Harmon Tower was reduced from 40 floors to 26 floors. Litigation arose when Perini sued MGM for allegedly failing to make payments. MGM countersued for recovery based on construction defects. Perini then filed third- and fourth-party claims against Pacific Coast Steel (“PCS”) and Century Steel, Inc. (“Century”), corporations hired by Perini to provide the steel installation. Century and PCS then filed a third- and fourth-party complaint against Halcrow, which had been hired to design the structure and perform inspections. Halcrow filed a motion to dismiss Century’s and PCS’s third and fourth-party complaints for failure to state a claim on which relief can be granted, based on the Court’s holding in *Terracon Consultants Western, Inc. v. Mandalay Resort Group*.² PCS and Century then sought leave to amend their complaints in order to include a cause for action for negligent misrepresentation.

Discussion

The court exercised its discretion to consider the matter because the legal issue of whether a negligent misrepresentation tort claim may be maintained against a design professional in a commercial construction setting is one of first impression in Nevada and the issue has resulted in split decisions in Nevada state and federal district courts.

¹ By Sara Stephan.

² 125 Nev. 66, 206 P.3d 81 (2009).

Negligent misrepresentation and the economic loss doctrine

The Court previously adopted § 552 of the Second Restatement of Torts in upholding a claim for negligent misrepresentation.³ Section 552 provides that in situations where only pecuniary loss results, liability for negligent misrepresentation is not based on general duty rules, but instead, on a “restricted rule of liability.”⁴ Liability is only imposed on a party who has supplied false information, where that information is for the guidance of others and where the party knows that the information will be relied upon by a foreseeable class of persons.⁵

However, in *Terracon*, the Court held that the economic loss doctrine precludes a plaintiff from asserting professional negligence claims against a design professional when the plaintiff seeks to recover purely economic losses in a commercial construction dispute.⁶ A design professional's duty to a party with whom it contracted is set forth in the contract, and “any duty breached arises from the contractual relationship only.”⁷ *Terracon* recognized that exceptions to the economic loss doctrine exist, but it did not address whether the economic loss doctrine barred plaintiffs from asserting claims for negligent misrepresentation.

The Court noted that exceptions to the economic loss doctrine are allowed “in a certain category of cases when strong countervailing considerations weigh in favor of imposing liability.”⁸ For example, exceptions are proper when there is a significant risk that “the law would not exert significant financial pressures to avoid such negligence.”⁹ The Court then held that negligent misrepresentation claims did not fall into such a category.

The Court disagreed with PCS and Century’s arguments and held that Century and PCS should not have been permitted to amend their complaints to assert negligent misrepresentation.

Conclusion

The Court held that in commercial construction defect litigation, the economic loss doctrine applies to bar claims against design professionals for negligent misrepresentation where the damages alleged are purely economic. Thus, the district court was compelled to deny Century and PCS’s motions to amend their third- and fourth- party complaints.

³ *Bill Stremmel Motors, Inc. v. First Nat'l Bank of Nev.*, 94 Nev. 131, 134, 575 P.2d 938, 940 (1978) (quoting RESTATEMENT (SECOND) OF TORTS § 552 (1977), which provides that “One who, in the course of his business, profession or employment, or in any other [trans] action in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.”).

⁴ RESTATEMENT (SECOND) OF TORTS § 552 cmt. a (1977).

⁵ *Id.* cmt. b.

⁶ *Terracon*, 125 Nev. at 80, 206 P.3d at 90.

⁷ *Id.*

⁸ 125 Nev. at 73, 206 P.3d at 86.

⁹ *Id.* at 76-77, 206 P.3d at 88.