

CONCURRING AND DISSENTING OPINION BY ACOBA, J.

I concur in the result, except for two matters.

Respectfully I would hold that the economic loss rule does not "bar[] the AOA's negligence claims based on violations of contract specifications," majority opinion at 129 (emphasis omitted), insofar as the alleged defective concrete floor slabs caused damages to "other property." The majority posits that consequential damages to other property such as "the cracked floor tiles, demising walls, skewed door jambs and windows, and damage caused by termites entering through the cracks were caused by the allegedly defective floor slabs, . . . [and] do not constitute damage to 'other property.'" Majority opinion at 127 (citations omitted). The residential townhouse condominium is comprised of 152 units within ten two-story buildings. However, "[a]ccepting [the AOA's] allegations as true, it is reasonable to infer that the enumerated 'defects and deficiencies' caused property damage beyond the defects in the condominium units themselves, and, therefore, that [the AOA] could have [otherwise] demonstrated that they were entitled to relief on their negligence claims." Berish v. Bornstein, 770 N.E.2d 961, 975 (2002). Accordingly, I would affirm the court and allow the negligence claim as "to other property" damages to be resolved at trial in light of "reasonable inferences" that may be drawn from the evidence presented.

Also, I would vacate the summary judgment order as to punitive damages under the circumstances posed. The AOA0 argues, in part, that

[t]he work was so defective and pervasive that, when considered together with the fact that the defects would necessarily be hidden, a fair inference arises that the defendants performed the work with an "entire want of care" and/or a "conscious indifference to consequences" that was motivated by a desire to cut costs and boost profits.

In light of the substantial injury to the residences caused by the alleged defective work and its latent nature, whether such damages should be awarded in this case is quintessentially a question of fact, after a trial, and is not resolvable on appeal at this point inasmuch as "'a positive element of conscious wrongdoing,'" majority opinion at 135 (quoting Masaki v. Gen. Motors Corp., 71 Haw. 1, 7, 780 P.2d 566, 571 (1989)), may be established by circumstantial evidence.

