

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOHN PORTER et al.,

Plaintiffs and Appellants,

v.

STEVEN WYNER et al.,

Defendants and Respondents.

B211398

(Los Angeles County
Super. Ct. No. BC347671)

**ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING**

[No change in the judgment]

IT IS ORDERED that the opinion filed in the above-captioned matter on April 8, 2010, be modified as follows:

1. On page 2, delete the first full paragraph under “Introduction” and replace with the following:

“Plaintiffs and appellants John Porter and Deborah Blair Porter (the Porters) appeal an order granting a motion for new trial in favor of defendants and respondents, Steven Wyner, Marcy Tiffany and Wyner & Tiffany following a jury verdict that (1) awarded Mrs. Porter \$211,000 in back wages and the Porters \$51,000 for breach of an attorney fee agreement; and (2) rescinded a release the Porters gave Wyner Tiffany regarding tax advice.”

2. On page 3, the first paragraph, first sentence under subheading “1. Underlying Action” delete “are partners in” and replace with “is” so that the sentence reads: “Wyner Tiffany is a law firm that focuses on educational rights of disabled students.”

3. On page 3, the first paragraph, first sentence after subheading “2. Mediation and Settlement” insert a new footnote after “Tiffany.” The footnote should read:

“Wyner formed the law partnership with Tiffany in February 2003. Any further references to Wyner Tiffany are to Steven Wyner, Marcy Tiffany and Wyner & Tiffany.”

4. On page 4, footnote 2 is revised to read: “Under a fee-shifting statute, if the federal defendants in the underlying action were found liable, they were also responsible to pay the Porters’ attorney fees and costs.”

5. On page 6, delete the first full paragraph starting with “The Porters . . .”, and replace with the following: “The Porters and the federal defendants in the underlying action signed the settlement agreement as parties. Wyner signed at the end of the agreement on behalf of Wyner Tiffany under the words, ‘APPROVED AS TO FORM.’ ”

6. On page 6, delete the last sentence right before subheading “5” and replace with the following: “The settlement sums were deposited and paid by the federal defendants in the underlying action as stipulated.”

7. On page 7, delete the “&” on the last full sentence between Wyner and Tiffany.

8. On page 10, the second line under subheading “5,” insert “the” between “on” and “ground” so that it reads “Wyner Tiffany moved for a new trial on the ground that they were”

9. On page 15, the last paragraph, fourth line, delete the sentence beginning with “Mrs. Porter testified that the Porters . . .” and replace with the following: “Mrs. Porter testified that the Porters met with the mediator and opposing counsel at one point during the mediation and were told that the federal defendants in the underlying action were concerned about a ‘double-dipping’ issue relating to her lost earnings claim.”

10. On page 16, the fourth line from the bottom, delete the word “that” so the sentence reads: “However, *Wimsatt* did not hold that the mediation confidentiality rule bars every communication with”

11. On page 17, the third line from the top, delete “the” after “to” and before “mediation” so that the line reads: “identifiable link to mediation confidentiality.”

12. On page 17, first full paragraph, first sentence, delete the words “Porter and” and insert “Tiffany” after “Wyner” so that the sentence reads: “In this case, Wyner Tiffany did not demonstrate to the trial”

13. On page 17, the last sentence of the first full paragraph should be deleted and replaced with: “That Porter and Wyner were able to reach a side agreement about paying lost earnings may have facilitated a final resolution of the underlying case between the Porters and the federal defendants, but any discussions about that side deal were not between disputants to the mediation.”

14. On page 17, the first sentence of second paragraph, delete “its” and replace with “the” so that it reads: “The trial court granted the motion for new trial”

15. On page 18, the third paragraph should be deleted and replaced with the following:

“Though we understand the trial court might have been worried that the present facts were similar to the *Simmons* case given that Wyner Tiffany withdrew any objection to the mediation privilege before trial began, it provided no ground to order a new trial.”

16. On page 18, the last paragraph, first sentence, delete “and” between “Wyner” and “Tiffany” so that it reads: “Here, the communications between the Porters, on the one hand, and Wyner Tiffany, their attorneys,”

This modification effects no change in the judgment.

The petition for rehearing filed by Respondents on April 23, 2010, is denied.

BIGELOW, P. J.

RUBIN, J.