

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHRISTOPHER P. RUIZ et al.,

Plaintiffs and Respondents,

v.

HARBOR VIEW COMMUNITY  
ASSOCIATION,

Defendant and Appellant.

G034912

(Super. Ct. No. 04CC07385)

ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING; NO CHANGE IN  
JUDGMENT

It is ordered that the opinion filed herein on December 19, 2005, be modified as follows:

1. On page 18, in the second paragraph beginning “HVCA argues the July 11 letter,” delete the second sentence and replace it with the following sentence:

The litigation privilege does not retroactively protect any and all communication preceding the litigation; the privilege applies from the point the contemplated litigation is seriously proposed in good faith for purposes of resolving the dispute.

2. On page 18, in the second paragraph, at the end of the case citation following the modified second sentence, after “35” add “& fn.10”, and, after the close parenthesis of the case citation, insert footnote 6 which reads as follows:

<sup>6</sup> In *Edwards v. Centex Real Estate Corp.*, *supra*, 53 Cal.App.4th at page 35, the court stated that for the privilege to protect communications, “the contemplated litigation must be *imminent*.” The court inferred the element of imminence from the Second Restatement of Torts. (*Edwards v. Centex Real Estate Corp.*, *supra*, at p. 35.) The litigation must be imminent, the *Edwards* court explained, because “[u]nless and until the parties are negotiating under the actual threat of impending litigation, the original justification for the litigation privilege of encouraging access to the courts can have no relevance to their communications.” (*Ibid.*)

3. On page 19, in the first full paragraph beginning “The potential for litigation existed,” delete the second sentence and replace it with the following sentence:

But when the July 11 letter was written,  
litigation had not been seriously considered, the  
dispute had not ripened into a proposed  
proceeding, and the parties were not negotiating  
under the actual threat of litigation.

4. On page 19, in the first full paragraph, at the end of the fourth sentence after “a demand letter,” add the phrase “or otherwise seriously proposed litigation as a means for resolving their dispute.”

5. On page 20, the title of subpart C is modified to read as follows:

*C. Ruiz Failed to Meet His Burden of Proving  
Publication, but the Trial Court on Remand  
Must Reconsider Ruiz's Request for Discovery  
on the Issue of Publication of the July 11 Letter.*

These modifications do not affect a change in the judgment. The petition for rehearing is DENIED.

FYBEL, J.

WE CONCUR:

SILLS, P. J.

BEDSWORTH, J.