

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MICHAEL MURPHY et al.,

Plaintiffs and Appellants,

v.

BDO SEIDMAN et al.,

Defendants and Respondents.

B154584

(Los Angeles County
Super. Ct. No. BC 222929)

ORDER MODIFYING OPINION
AND ORDER FOR PETITION FOR
REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:*

GOOD CAUSE appearing the opinion filed in the above entitled matter on November 24, 2003, is modified as follows:

1. Page 8, last full paragraph, originally reads:

Bily can thus be briefly summarized as follows: (1) ordinary negligence--*no duty* to third parties; (2) negligent misrepresentation--duty to third parties who with *substantial certainty* could be foreseen to rely on the misrepresentation; and (3) intentional misrepresentation--duty to third parties who could be *reasonably foreseen* to rely on the misrepresentation.

Change to:

Bily can thus be briefly summarized as follows: (1) ordinary negligence--*no duty* to third parties; (2) negligent misrepresentation--duty to third parties who would be known with *substantial certainty* to rely on the misrepresentation; and (3) intentional misrepresentation--duty to third parties who could be *reasonably foreseen* to rely on the misrepresentation.

2. Page 10, first full paragraph, first sentence, originally reads:

Such an allegation, and similar allegations targeted at Logan, satisfy *Bily's* criteria for negligent misrepresentation: respondents could with substantial certainty foresee that potential investors such as appellants would rely on the misstatements. (*Bily, supra*, 3 Cal.4th at pp. 413-414.)

Change to:

Such an allegation, and similar allegations targeted at Logan, satisfy *Bily's* criteria for negligent misrepresentation: respondents knew with substantial certainty that potential investors such as appellants would rely on the misstatements. (*Bily, supra*, 3 Cal.4th at pp. 413-414.)

3. Page 18, last paragraph, third sentence originally read:

Under *Bily*, respondents are liable for (1) negligent misrepresentation if they knew it was substantially likely that appellants would receive the misstatements and (2) intentional misrepresentation if it was reasonably foreseeable appellants would receive the statements.

Change to:

Under *Bily*, respondents are liable for (1) negligent misrepresentation if they knew it was substantially certain that appellants would receive the misstatements and (2) intentional misrepresentation if it was reasonably foreseeable appellants would receive the statements.

[end of modifications]

The modifications effect no change in the judgment. The petition for rehearing is denied.