

1977

# Woodland Theatres, Inc. v. ABC Intermountain Theaters et al : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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WOODLAND THEATRES, INC.,  
a corporation,

Plaintiff-Appellant,

vs.

ABC INTERMOUNTAIN THEATRES,  
INC., a corporation, and  
PLITT INTERMOUNTAIN THEATRES,  
INC., a corporation,

Defendants-Respondents.

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Case No. 14440

Case No. 14441

PETITION FOR REHEARING

Plaintiff-Appellant Woodland Theatres, Inc. hereby respectfully petitions the Court for a rehearing on one of the issues raised in its appeal from the District Court Order granting defendants-respondents' Motion for Summary Judgment. The single issue upon which plaintiff-appellant seeks rehearing is the dismissal of its claims for actual damages arising out of breaches of its leasehold agreement.

The District Court in granting summary judgment for defendants-respondents, held that plaintiff-appellant's acceptance of rent subsequent to the breaches of its lease waived its claims for damages. The Supreme Court in its

opinion in this action disagreed, holding that plaintiff-appellant's actions did not constitute a waiver of any damage claims arising under the lease. Nevertheless, the Court held that plaintiff-appellant could not state a claim for relief based upon an implied duty upon the lessee to produce profit from which the plaintiff-lessor would participate through a percentage lease agreement.

In its Opinion and Order, however, the Court overlooked plaintiff-appellant's substantial damage claims relating solely to the actual damages arising from breaches of the lease. Specifically, in paragraph 9 of plaintiff-appellant's complaint in Civil Action No. 222497, the plaintiff-appellant claims breach of the lease by failure "to improve, properly care for, and maintain the theatre in a good state of repair and by allowing the theatre to deteriorate and remain in a position of disrepair." Plaintiff-appellant makes further specific claims respecting such breaches which it has claimed resulted in actual damage to the plaintiff-appellant as lessor, measured by the cost of repair and/or the decline in the value of the premises by reason of the lessee's breach.

Consistent with the Supreme Court's opinion in this action, such damage claims are not waived by the plaintiff-appellant's acceptance of rent. Accordingly, plaintiff-



appellant petitions for rehearing on this issue and respectfully prays that the Court modify its Order so as to allow plaintiff-appellant to proceed on its claims for actual damage.


This Petition is supported by the appended Brief and by the record on appeal before the Court.

DATED this 4<sup>th</sup> day of February, 1977.

Respectfully submitted,

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