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Von K. Stocking, Donna H. Stocking v. First Federal Savings and Loan Association of Logan, Fred Hunsaker and Bryan Chaez, as officers and individuals; Brad H. Bearnson, Trustee; Norman Barber and Helen Barber, Successor Beneficiaries; N. George Daines, and John Does 1-8 : Petition for Rehearing

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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VON K. STOCKING and DONNA H.  
STOCKING, husband and wife,

Plaintiffs and  
Appellants,

vs.

FIRST FEDERAL SAVINGS & LOAN  
ASSOCIATION OF LOGAN, FRED  
HUNSAKER and BRYAN CHADEZ, as  
officers and as individuals;  
BRAD H. BEARNSON, Trustee;  
NORMAN BARBER and HELEN  
BARBER, Successor Benefici-  
aries; N. GEORGE DAINES, and  
JOHN DOES 1 - 8,

Defendants and  
Respondents.

PETITION FOR REHEARING

Case No. *890345-CA*  
~~90-345-CA~~

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COME NOW Plaintiffs and petition for a rehearing of the appeal. The points of law and fact the Court overlooked and misapprehended are the facts in this case evaluated within the analysis expressed in Maxfield v. Rushton, 115 Ut. Adv. Rep. 33, 35; 779 P. 2d 237, 239. There this Court held that a Trial Court's discretion must be balanced against the high priority of affording disputants an opportunity to be heard and to do justice between them. The most important factor is whether justice may result from the dismissal. Although the dismissal in Maxfield was upheld, it was in a circumstance where the appellant avoided an actual trial setting at the last moment.

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In this case, where a trial date had never been offered, the period of inaction was not so great as to justify the Trial Court's avoiding its own earlier findings that there were disputed facts which should be tried. Even though some issues related to this matter, between Plaintiffs and Barbers, are presently before the Utah Supreme Court (No. 880410), this case includes a broader dispute between Plaintiffs and the other Defendants which should be reached by this case.

This petition is presented in good faith and not for delay.

DATED this 29th day of March, 1990.

MALOUF LAW OFFICES

By   
Raymond N. Malouf  
Attorney for Plaintiffs and  
Appellants

#### CERTIFICATE OF MAILING

I hereby certify that on the 29th day of March, 1990, a true and correct copy of the foregoing PETITION FOR REHEARING, Utah Court of Appeals Case No. 90-345-CA, was mailed postage prepaid to the following:

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