

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

250 L.L.C.,

Plaintiff and Appellant,

v.

PHOTOPOINT CORP. (USA),

Defendant,

SHERWOOD PARTNERS, INC.,

Intervener and Appellant.

A105231

(San Francisco County  
Super. Ct. No. 324137)

SHERWOOD PARTNERS, INC.,

Plaintiff and Appellant,

v.

250 L.L.C.,

Defendant and Appellant.

(San Francisco County  
Super. Ct. No. 401396)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 28, 2005, be modified as follows:

1. After the last full paragraph on page 14, a new paragraph, including a new footnote, which will require renumbering of all subsequent footnotes is added. The new text reads as follows:

In view of our holding that tenants can agree to waive section 1950.7, there is no substance to the suggestion in 250's petition for rehearing that our decision will "hurt start up companies."<sup>6</sup> 250 reasons that landlords will be less likely to rent to new businesses without the protection large security deposits can provide against defaults in the payment of rent, and apparently presumes that our decision will

preclude that protection. However, parties can “plan around” section 1950.7 should they desire to do so. The question is whether that planning occurred here.

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<sup>6</sup> Other arguments in the petition for rehearing are either improperly advanced for the first time in the petition (*Gentis v. Safeguard Business Systems, Inc.* (1998) 60 Cal.App.4th 1294, 1308) or adequately addressed in the discussion. The principal new argument is that section 1950.7 is preempted by the current Bankruptcy Code. While we need not and do not reach this belated contention, we note that the petition does not identify precisely how much of the field of tenant security deposit law Congress has allegedly intended to occupy, and that the argument rests on the unsupported assumption that section 1950.7 would not be applied in a bankruptcy—a proposition no reported case has considered, and at least one commentary has rejected (*St. James, supra*, 26 Cal. Bankr. J. at pp. 50-51).

2. The first full paragraph on page 22 is modified to read as follows:

Accordingly, there was no waiver of section 1950.7 in the lease. Indeed, the parties agreed to an extension of the time specified in the statute within which the security deposit had to be returned.

There is no change in the judgment.

The petition for rehearing is denied.

DATED: \_\_\_\_\_

\_\_\_\_\_

Kay, P.J.

Trial Court:

San Francisco County Superior Court

Trial Judge:

Honorable Perker Meeks

Counsel for Plaintiff and Appellant  
and for Defendant and Appellant  
250 L.L.C.:

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