

1986

Colman v. Colman : Unknown

Utah Court of Appeals

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Michael N. Zundel; Roe & Fowler; Attorney for Respondent.

Frank J. Allen; Clyde, Pratt, Gibbs & Cahoon; Attorney for Appellant.

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FABIAN & CLENDENIN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

TWELFTH FLOOR
215 SOUTH STATE STREET
P. O. BOX 510210
SALT LAKE CITY, UTAH 84151

TELEPHONE
(801) 531-8900

HAROLD P. FABIAN
1885-1975
BEVERLY S. CLENDENIN
1889-1971
SANFORD M. STODDARD
1909-1974

DANIEL W. ANDERSON
GARY E. JUBBER
ROSEMARY J. BELESS

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UTAH COURT OF APPEALS
BRIEF

March 24, 1987

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Clerk, Utah Court of Appeals
230 South Fifth East
Salt Lake City, UT 84111

Subject: Phyllis E. Colman v. William J. Colman
Case No. 860325 CA

Pursuant to Rule 24(j), Rules of Utah Court of Appeals, Phyllis E. Colman, plaintiff and respondent, submits the following citations of supplemental authorities:

Respondents Brief, Page 7.

5 Wright and Miller, Federal Practice and Procedure, § 1219; 2A Moores Federal Practice, ¶ 8.14, and Misco Leasing, Inc. v. Keller, 490 F.2d 545, 548 (10 Cir. 1974). These authorities hold that the doctrine of "theory of the pleadings" was abrogated by the Rules of Civil Procedure, particularly Rule 8(a), and that it is not necessary to allege the theory under which recovery is sought.

Rosenlof v. Sullivan, 676 P.2d 372 (Utah 1983), holding that pleader is required only to make a short and plain statement of his claim and that failure to plead a particular theory is not fatal where no prejudice is shown.

Hansen v. Morris, 3 Utah 2d. 310, 283 P.2d 884, 886 (1955), holding, in effect, that affirmative defenses relied


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upon by a plaintiff to overcome a defense are not subject to
the same pleading rules as are those asserted by defendants.



Bryce E. Roe
Attorney for Respondent

cc: Frank J. Allen, Esq.
Douglas G. Mortensen, Esq.