

1986

Madsen v. Prudential Federal Savings & Loan Assoiation : Unknown

Utah Supreme Court

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August 1, 1988

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AUG 1 1988

Geoffrey J. Butler, Clerk
Utah Supreme Court
322 State Capitol Building
Salt Lake City, UT 84114

Clerk, Supreme Court, Utah

Re: Madsen v. Prudential
Case No. 860148

Dear Mr. Butler:

As permitted by Rule 24(j) of the Rules of the Utah Supreme Court, Prudential Federal Savings & loan Association makes a brief response to the letter of supplemental authorities (dated July 20, 1988) submitted by the Madsens. Their letter refers to six case opinions. They merit a brief comment.

The Madsens first cite In Re Cement and Concrete Antitrust Litigation, 515 F. Supp. 1076, 1080 (D. Ariz. 1981). The portion of the opinion they quote suggests a judge need not be disqualified for having a potential interest in the outcome of an action if he first learns of the interest only after the action is underway and if the interest is "small." Not so. The United States Supreme Court cited In Re Cement in Liljeberg v. Health Services Acquisition Corp., ___ U.S. ___, 56 U.S.L.W. 4637, 4641, N. 9 (U.S. June 17, 1988) (No. 86-957). After noting the administrative difficulties posed to a judge who is monitoring for interest, the Court concluded:

Of course, notwithstanding the size and complexity of the litigation, judges remain under a duty to stay informed of any personal or fiduciary financial interest they may have in cases over which they preside.

Id. Here, Judge Rigtrup never recused himself although he was aware of his financial interest even before he was assigned the case. Remember, Judge Rigtrup had presided

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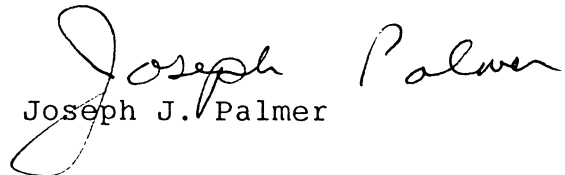
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over the four earlier interest-on-reserve cases. He believed (albeit mistakenly) that he had disclosed his Prudential mortgage in a meeting related to those actions. See Brief of Respondent (at 6, 9). This is not a situation where the judge inadvertently discovered his interest mid-way through the litigation. It is noteworthy that the district judge who presided over In Re Cement, and whose opinion the Madsens quote, did recuse himself after learning of his potential interest.

The remaining five cases cited by the Madsens are readily distinguishable. In each of them, the party moving for disqualification knew of the grounds for disqualification long before the judges considered the merits of the actions. That is not this case. Here, the conduct requiring disqualification occurred after trial. See Brief of Respondent, Point IV (at 42-43).

Please bring this letter (and the enclosed nine copies) to the attention of the Court.

Sincerely yours,


Joseph J. Palmer

JJP/jf

cc: Robert J. Debry, of
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