

1986

# Madsen v. Prudential Federal Savings & Loan Assoiation : Unknown

Utah Supreme Court

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FILED

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860148

Clerk, Supreme Court, Utah

January 11, 1988

Mr. Geoffrey Butler  
Clerk of the Court  
Utah Supreme Court  
332 State Capitol Building  
Salt Lake City, Utah 84114

Dear Mr. Butler:

RE: Sixth Memo of Newly Uncovered Authority  
Madsen v. Prudential Federal Savings & Loan  
Assn. Case No: 860148

Plaintiff has recently uncovered the case of Hill v. Cloward, 377 P.186 14 Ut. 2d 55 (1962). That case is additional authority for Points V and VI of Appellant's opening brief. Specifically:

But there is an insuperable difficulty with the plaintiff's position. His counsel let the incident pass without objection and without a request to rectify any harm he thought had been done. Fair play and good conscience require that he do so at the earliest opportunity. It would be manifestly unjust to permit a party to sit silently by, believing that prejudicial error had been committed, proceed with the trial to its completion, and allow the jury to deliberate and reach a verdict, to see if he wins, then if he loses, come forward with a claim that such an error rendered the verdict nullity. If this could be done, proceedings after such an occurrence would be in vain and thus an imposition upon the court, the jury and all concerned. The court will not countenance any such mockery of its proceedings. If something occurs which the party thinks is wrong and so prejudicial to him that he thereafter cannot have a fair trial, he must make his objection promptly and seek redress by moving for a mistrial, or by having

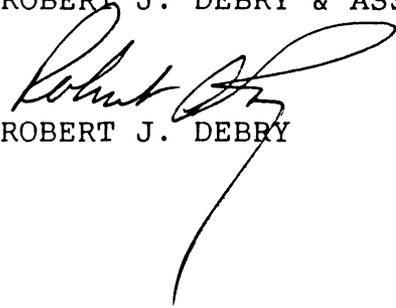
Page Two  
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cautionary instructions given, if that  
is deemed adequate, or be held to waive  
whatever rights may have existed to do so.

Please refer this matter to the members of the  
Court.

Sincerely,

ROBERT J. DEBRY & ASSOCIATES



ROBERT J. DEBRY

RJD/sd

cc: Joseph Palmer, Esq.  
Peter Billings, Esq.