FILED
APR 23 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

34

FEDERAL LAND BANK OF OMAHA,

Appellee,

vs.

ROBERT D. WOLFE AND SANDRA J. WOLFE, husband and wife, DALE WOLFE and DAVID WOLFE, Trustee of the Writ Trust; CARGILL INC., and BUENA VISTA COUNTY, IOWA,

Appellees,

UNITED STATES OF AMERICA acting through FARMERS HOME ADMINISTRATION,

Appellant.

Filed April 23, 1986

6-43
85-1081

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Appeal from the Iowa District Court for Buena Vista County (No. 22106), Richard F. Branco, Judge.

Defendant-appellant appeals from the overruling of its application for order nunc pro tunc or other equitable relief. **REVERSED AND REMANDED.**

Richard L. Murphy, Assistant U.S. Attorney, for defendant-appellant.

A. Frank Baron and G. Mark Rice of Baron & Wenell, Sioux City, for defendants-appellees.

Heard by Oxberger, C.J., Schlegel, and Hayden, JJ.

**OXBERGER, C.J.**

FHA appeals a lower court denial of its application for a nunc pro tunc order or other equitable relief following a decree of foreclosure. We reverse and remand.

FHA filed a timely answer asserting its claim and requested that the court handling the foreclosure action assign priorities as to lien interests. The trial court denied FHA's application for a nunc pro tunc order, but ignored FHA's timely request for other equitable relief.

There is no dispute that FHA was the second lien holder in order and was entitled to the overplus if any resulted from the sale of the property. There was no waiver in FHA's failure to object to the motion for summary judgment. FHA did not object to the foreclosure and property sale. FHA acted in a timely fashion when they learned the property sale resulted in an overplus.

Equity requires that we reverse and remand with directions that the lower court hold a hearing and proceed according to Iowa Code § 626.82.

**REVERSED AND REMANDED.**