

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 24 1988

CLERK SUPREME COURT

FEDERAL LAND BANK OF OMAHA,)
A Corporation,)

Plaintiff-Appellee,)

vs.)

JOHN F. TIFFANY and DONNA TIFFANY)
Husband and Wife,)

Defendants-Appellants,)

BRENTON STATE BANK, JEFFERSON,)
formerly JEFFERSON STATE BANK;)
FARMERS COOPERATIVE COMPANY,)
Farnhamville, Iowa; GEORGE MOBLEY;)
KEWA EXPLORATION, INC.; and)
GREENE COUNTY, IOWA,)

Defendants.)

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Appeal from the Iowa District Court for Greene County
(No. 16735) - Russell J. Hill, Judge.

Plaintiff brought suit to foreclose a farm real estate
mortgage against the Tiffanys and other junior lien
holders. **AFFIRMED.**

Scott H. Hughes of the Law Offices of Scott H. Hughes,
Council Bluffs, for defendants-appellants.

Patrick T. Deren for Salvo, Deren, Schenck &
Lauterbach, Harlan, for plaintiff-appellee.

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

OXBERGER, C.J.

This is an appeal following a judgment for the plaintiff to foreclose a farm real estate mortgage against the defendants. The appellants present two issues on appeal: (1) whether the district court erred in failing to determine whether the bank had complied with the Farm Credit Act forbearance provisions and further whether noncompliance could serve as a defense to foreclosure; and (2) whether the release of the defendants from mediation was properly issued in accordance with Iowa Code chapter 654A. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. We affirm.

In 1980 the Federal Land Bank of Omaha loaned the Tiffanys \$370,000 which was used to purchase additional real estate. The note was secured by a real estate mortgage. The Tiffanys were billed for their yearly loan payment on July 1, 1984. They failed to make the payment. The bank sent several letters, including a certified letter, to the Tiffanys in 1984 requesting that they contact the bank concerning their debt. The Tiffanys did not respond. In late 1984 or early 1985 the Tiffanys filed a Petition in Bankruptcy. In March 1985 Mr. Tiffany wrote to the bank requesting relief through a loan reduction proposal. The bank responded by asking for a clarification of the proposal. The bank received no response. The bank filed the petition to foreclose in May 1985.

The plaintiff filed a request for mediation pursuant to Iowa Code chapter 654A. The Tiffanys made a written request for information but failed to do anything further. The mediation service closed the case due to the Tiffanys' failure to participate as required by the rules. Judgment in rem was entered against the Tiffany real estate following trial. The Tiffanys appeal.

I.

The defendants contend that the district court erred in failing to determine whether the bank had complied with the forbearance provisions of the Farm Credit Act. The defendants further contend that such noncompliance is a defense to foreclosure. Before reaching the question of whether the plaintiff/bank complied with the forbearance provisions as set out in the 1985 Amendment to the Farm Credit Act, we decide first whether such regulations may be used as a defense.

Generally, the 1985 Amendment to the Farm Credit Act provides for full disclosure of information to farm borrowers, establishes a system of appeals, and reemphasizes the congressional desire that farm credit institutions exercise some degree of forbearance with borrowers who are in default. 12 U.S.C.A. §§ 2001-2260 (1988). Specifically, the Tiffanys rely upon section 301(b) of the 1985 Amendment now codified in 12 U.S.C.A. § 2199 (1988). Section 301(b) requires system institutions to develop a

policy of forbearance and to provide borrowers with a copy of that policy.

The Iowa Supreme Court adopted the four-factor test of Cort v. Ash, 422 U.S. 66, 78 (1975) for determining whether a private remedy is implicit in a statute. Seeman v. Liberty Mut. Ins. Co., 322 N.W.2d 35 (Iowa 1985). The relevant factors are: (1) whether the plaintiff is one of a class for whose especial benefits the statute was enacted; (2) whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; (3) whether it is consistent with underlying purposes of legislative scheme to imply such a remedy for the party; and, (4) whether implication of a private cause of action will intrude into an area over which the federal government has exclusive jurisdiction or which has been delegated exclusively to state administrative agency. Seeman, 322 N.W.2d at 38.

While the Iowa court has not considered the issue of whether a private right of action exists under the Farm Credit Act, the Eighth Circuit Court of Appeals as well as a number of federal district courts in the Eighth Circuit have utilized the Cort analysis and have held that a private right of action does not exist under the Farm Credit Act or the 1985 Amendment to the Act. Redd v. Fed. Land Bank of St. Louis, 661 F. Supp. 861, 863 (E.D.Mo. 1987), aff'd 1988 WL 68222 (8th Cir.); Mendel v. Production Credit

Ass'n of the Midlands, 656 F. Supp. 1212, 1215 (D.S.D. 1987); Aberdeen Production Credit Ass'n v. Jarrett Ranches, Inc., 638 F.Supp. 534, 536-37 (D.S.D. 1986); Corum v. Farm Credit Service, 628 F.Supp. 707, 719-20 (D. Minn. 1986); Spring Water Dairy, Inc. v. Fed. Intermediate Credit Bank of St. Paul, 625 F.Supp. 713, 718-20 (D. Minn. 1986). The law is well settled that the regulations of the Farm Credit Act do not create any affirmative duties or prohibitions. Federal Land Bank of St. Louis v. Hopman, 658 F.Supp. 92, 94 (E.D. Ark. 1987). The Eleventh Circuit, Court of Appeals, held that the regulations in the act do not create a substantive rule but a general statement of agency policy and therefore do not have the force and effect of law. Smith v. Russellville Production Credit Ass'n, 777 F.2d 1544, 1548 (11th Cir. 1985). The Eighth Circuit Court of Appeals held specifically that the Farm Credit Act including the 1985 Amendment does not provide a valid defense to a foreclosure action. Redd v. Fed. Land Bank of St. Louis, 1988 WL 68222 (8th Cir.). See also Fed. Land Bank of St. Louis in Hopman, 658 F.Supp. at 94.

Defendant relies on an exchange between two U.S. Representatives concerning the Farm Credit Act Amendment of 1985. 12 U.S.C.A. §§ 2201-2260 (1988). The Eighth Circuit Court of Appeals noted that those remarks are not binding as to what the statute says or means, nor are they dispositive of whether the Farm Credit Act, as amended, provides a

private cause of action. Redd v. Fed. Land Bank of St. Louis, 1988 WL 68222 (8th Cir.). The Eighth Circuit concluded that neither the language nor the legislative history of the 1985 Amendment shows that Congress intended to create substantive rights enforceable through a private cause of action. Redd, 1988 WL 68222 (8th Cir.). In Aberdeen Production Credit Ass'n v. Jarrett, 638 F.Supp. 534 (D.S.D. 1986), the court declined to find any significant probative value in using subsequent legislative history to establish the intent of Congress in enacting the original legislation. See Andrus v. Shell Oil Co., 446 U.S. 657, 666 n.8 (1980).

The legislative intent does not provide such a defense to the Tiffanys. Such a defense is not consistent with the underlying purpose of this legislative scheme of a broad regulatory nature. Finally, this case intrudes into an area over which the federal government has exclusive jurisdiction. We find that while farmers who are borrowers are clearly the class for whose benefit the Farm Credit Act was enacted, the Farm Credit Act along with the 1985 Amendment fail to satisfy the remaining prongs of the Cort test. We hold that the trial court correctly denied the Tiffanys' defense to foreclosure based on the bank's alleged noncompliance with the Farm Credit Act Amendment provisions.

II.

The defendants contend that they were improperly released from mediation pursuant to Iowa Code section 654A. Iowa Code section 654A.11 entitled "Mediation Release" became effective on May 30, 1986. It provides in relevant part:

If the borrower waives mediation, . . . the borrower and the creditor may sign a statement that mediation was waived If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release.

Iowa Code § 654A.11 (1987). More specific regulations concerning automatic mediation release have since been promulgated and adopted. Iowa Admin. Code r. 61-17.16 (1988).

The bank filed a request for mediation with the Iowa Farm/Creditor Mediation Service. The mediation service then notified the Tiffanys. The Tiffanys acknowledge their receipt of the notice on July 12, 1986. However, the Tiffanys did not respond as provided in the notice. They requested information concerning the mediation and the plaintiff's authority to make such a request. The Tiffanys sent another letter on August 12, 1986. They made no attempt to comply with the notice or to meet and mediate the differences between themselves and the plaintiff. The uncooperative attitude of the Tiffanys is evident in the tone of their letters as well as the fact that they filed Articles of Incorporation with the Secretary of State on July 14, 1986, in an attempt to limit liability.

On September 25, 1986, the mediation service closed the mediation session due to the Tiffanys' failure to meet with the mediator or to participate in a mediation meeting within twenty-one days of receipt of notice of such mediation.

The trial court's findings that the mediation release was properly issued due to the Tiffanys' failure to participate in good faith with the mediation service is supported by substantial evidence.

We hold that the Farm Credit Act including the 1985 Amendment may not be used in a private right of action as a defense. We also hold that the trial court was correct in finding the Tiffanys' mediation release proper.

AFFIRMED.