FEB 28 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ELIZABETH HEISLER,	)	
Appellee,	)	Filed February 28, 1978
vs.	)	
FORD MOTOR CREDIT COMPANY OF IOWA and FORD MOTOR CREDIT COMPANY,	)	338 2-59771
Appellants.	)	

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Defendant credit companies appeal the trial court's refusal to set aside default entered 21 days after filing of petition alleging violation of § 537.5201, The Code, 1975. - Reversed.

Joseph G. Bertroche & H. Edwin Detlie, of Bertroche and Hagen, Des Moines, for Appellants.

William H. Cone, Jr., of Erickson, Seckington, Laughlin & Huston, Urbandale, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendants Ford Motor Credit Company of Iowa and Ford Motor Credit Company appeal the refusal of the trial court to set aside default judgment entered just 21 days after plaintiff Elizabeth Heisler filed her petition seeking actual and punitive damages for the defendants' alleged failure to give proper notice of her right to cure, in violation of the Iowa Consumer Credit Code. We reverse.

Defendants' local counsel entered an appearance four working days after the entry of default alleging an inadvertent staff error occurring within the defendants' out-of-state legal department prevented a timely appearance and constituted good cause for setting aside the default as required by Rule 236, Rules of Civil Procedure. Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977) stated "good cause" for setting aside a default judgment

> . . . is a sound effective, truthful reason, something more than an excuse, a plea, an apology, an extenuation or some justification for the resulting effect. . . . The movant must affirmatively show he intended to defend and took steps to do so, but because of some misunderstanding, accident, mistake, or excusable neglect failed to do so, Flexsteel Ind. Inc. v. Morbern Ind. Ltd., 239 N.W.2d 593, 596 (Iowa 1976) and Dealers Warehouse Co. v. Wahl & Associates, 216 N.W.2d 391, 394-95 (Iowa 1974).

Paige observed by the plain language of rule 236 good cause must be based on one of the five enumerated grounds.

We are convinced the defendants have satisfactorily shown that they intended to defend the suit, and that their failure to appear resulted solely from the mistake inadvertently made by their paralegal staff member. The record shows the paralegal thought that local counsel had been retained by telephone during his vacation absence. Therefore, he thought the draft letter was for confirmation purposes while in actuality it was drawn to solicit local counsel's representation. We think the delay in contact with local counsel and the attendant delay in appearance is explained by this mistake. We consider also as did **Paige**, supra, and Wharff v. Iowa Methodist Hospital, 219 N.W.2d 18, 22 (Iowa 1974) that the defendants moved very promptly to set aside the default judgment. **Wharff** cited approvingly to Reilley v. Kinkead, 181 Iowa 615, 165 N.W. 80 (1917) which ruled a

failure to timely appear or answer attributable to a new member of the attorney's staff did not constitute negligence. **Reilley** relied upon Barto v. Sioux City Electric Co., 119 Iowa 179, 93 N.W. 268 (1903) which ruled that a misunderstanding between defendant staff members resulting in no attorney being contacted to conduct its defense sufficiently excused the default and entitled the defendant telephone company to a setting aside of the judgment.

Defendants argued in the trial court that **Barto, Reilley, Dealers Warehouse** and **Flexsteel** properly applied to the mistake would result in setting aside of the default judgment. The trial court should have so ruled.

Reversed and remanded with instructions to set aside the default and permit the defendants to answer.