

[N.D. Supreme Court]

Federal Land Bank of St. Paul v. Burk, 449 N.W.2d 826 (ND 1989)

Filed Dec. 20, 1989

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**IN THE SUPREME COURT**

**STATE OF NORTH DAKOTA**

The Federal Land Bank of Saint Paul, a corporation, Plaintiff and Appellee

v.

Willard D. Burk and Celia J. Burk, Defendants and Appellants

and

The United States of America, acting through the Farmers Home Administration, and Production Credit Association of Minot, Defendants

Civil No. 890194

Appeal from the District Court for Williams County, Northwest Judicial District, the Honorable William M. Beede, Judge.

**AFFIRMED.**

Opinion of the Court by Levine, Justice.

Winkjer, McKennett, Stenehjem, Murphy & Reiersen, P.O. Box 1366, Williston, ND 58802-1366, for plaintiff and appellee; argued by Laurel J. Forsberg.

Lucas & Smith, P.O. Box 1574, Bismarck, ND 58502-1574, for defendants and appellants; argued by Sheldon A. Smith.

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**Civil No. 890194**

**Levine, Justice.**

Willard and Celia Burk appeal from a district court order dismissing with prejudice a foreclosure action instituted against them by the Federal Land Bank of Saint Paul, and from an order denying their motion to vacate that dismissal. The Bank sought the dismissal after the bankruptcy court confirmed the Burks' plan for payment to creditors under Chapter 12 of the Bankruptcy Code. The Burks assert on appeal that the district court abused its discretion in dismissing the foreclosure action. We affirm under Rule 35.1(a)(4), N.D.R.App.P.

Beryl J. Levine

Vernon R. Pederson, S.J.

Herbert L. Meschke

Gerald W. VandeWalle

Ralph J. Erickstad, C.J.

Pederson, S. J., sitting in place of Gierke, J., disqualified.