IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2902
Summary Calendar

JANE C. GAYLE and
GEORGE S. GAYLE, JR.,

Plaintiffs-Counter
Defendants-Appellants,

versus

FEDERAL LAND BANK OF TEXAS,
a/k/a Farm Credit Bank of
Texas and STEVEN H. FOWLKES,
Substitute Trustee,

Defendants-Counter
Plaintiffs-Appellees.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-93-1086)

(August 15, 1994)

Before JOLLY, SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Borrowers commenced action against the bank under the Farm Credit Act of 1971 and its amendment, the Agricultural Credit Act

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

of 1987, 12 U.S.C. §§ 2001 - 2279aa-14 (1989 & Supp. 1994), to prevent acceleration of the note and foreclosure on the land securing the note. Because we find no error, we affirm.

I

In 1981, George and Jane Gayle (the "Gayles") borrowed $512,700 from what was then the Federal Land Bank Association of Texas, and is now the Farm Credit Bank of Texas (the "Bank"). This loan agreement was evidenced by a promissory note that was secured by a lien on a 327-acre tract of farm and ranch land in Fort Bend County, Texas, which the Gayles owned. This loan agreement required the Gayles to make thirty-five annual payments of $49,111.25 payable on or before October 1st of each year.

After several years in which the Gayles repeatedly tendered late payments and requested loan restructuring, the Gayles were unable to timely tender the October 1992 loan payment. As in years past, they requested loan restructuring pursuant to 12 U.S.C. § 2202a, which provided for loan restructuring if the lender determines that the potential cost of restructuring is less than or equal to the potential cost of foreclosure. After reviewing the Gayles' application for restructuring, the Bank denied the request, and the Credit Review Committee ultimately agreed with the Bank's decision. The Review Committee noted that "the current deficient restructuring plan [submitted by the Gayles] and the [Gayles'] continued inability to pay . . . precipitated the decision to

uphold the [bank's] decision to reject the [Gayles'] restructuring plan. . . ."

After rejecting the application for restructuring of the loan, the Bank sent a formal notice of default to the Gayles, which demanded payment by February 16, 1993. That notice stated that if the payment was not received by February 16, the entire note would be accelerated. When the Gayles failed to make the 1992 payment by February 16, the entire balance of the note became due and payable. The Bank again wrote the Gayles, demanding full payment and informing them that the property would be posted for foreclosure in April 1993.

II

In an effort to protect the Fort Bend County property from foreclosure, the Gayles filed suit in Texas state court, alleging that the Bank violated the Farm Credit Act of 1971 and its amendment, the Agricultural Credit Act of 1987. See 12 U.S.C. §§ 2001 - 2279aa-14 (1989 & Supp. 1994). They also obtained an ex parte temporary restraining order that prohibited the Bank from selling the property on April 6, 1993, as originally planned. The Bank removed the case to federal court on federal question jurisdiction, and subsequently filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). The Bank also counterclaimed for breach of contract based on the Gayles' default on the promissory note, and moved for summary judgment on that claim. The district court granted the Bank's motion to dismiss,

citing decisions in several circuits that held that there is no private cause of action under Agricultural Credit Act of 1987.[1] The district court also granted the Bank's motion for summary judgment. The Gayles appeal these judgments.

III

The Gayles contend that the district court erred in dismissing their complaint for failure to state a claim. Specifically, they argue that they have an implied private cause of action for violations of Agricultural Credit Act of 1987. The district court, citing the decisions of several other courts of appeal, held that there is no private cause of action under the Act. Because we have recently held that the Farm Credit Act of 1971, and its amendment, the Agricultural Credit Act of 1987 do not confer a private cause of action, we find no error. Grant v. Farm Credit Bank, 8 F.3d 295, 296 (5th Cir. 1993).

Next, the Gayles contend that the district court erred in granting summary judgment in favor of the Bank on the breach of contract counterclaim. Specifically, the Gayles argue that the court erroneously held that the Gayles could not raise the Bank's alleged violations of the Act as an equitable defense. According

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[1]The district court cited the following cases in support of the proposition that 12 U.S.C. § 2202 does not confer a private right of action: Saltzman v. Farm Credit Services, 950 F.2d 466 (7th Cir. 1991); Zajac v. Federal Land Bank, 909 F.2d 1181 (8th Cir. 1990)(en banc); Griffin v. Federal Land Bank, 902 F.2d 22 (10th 1990); Harper v. Federal Land Bank, 878 F.2d 1172 (9th Cir. 1989), cert. denied, 493 U.S. 1057 (1990).

to the Gayles, the Bank's failure to allow them to submit an independent appraisal of the Fort Bend County property constituted a violation of the Act. Moreover, they contend that the Bank violated the Act by foreclosing on the distressed loan before the Bank could consider the loan for restructuring.

Under Texas law, "[e]quity may grant relief against acceleration of the maturity of a promissory note when it is procured by inequitable conduct of the creditor [itself]." Winton v. Daves, 614 S.W.2d 464, 468 (Tex. Civ. App.--Waco 1981, no writ) (internal quotes omitted). Ignoring for the moment that the Act does not provide the Gayles with a private cause of action, neither of these alleged violations would lead us to conclude that the Bank had engaged in inequitable conduct. First, the Bank's decision to reject the application to restructure the loan was not affected by the value of the appraisal of the land.[2] Instead, its decision was based on the Gayles' financial position and their "deficient restructuring plan." Moreover, nothing in this record leads us to believe that the Bank instituted foreclosure proceedings before completing their consideration of the Gayles' application for restructuring of the loan. Instead, the Bank had officially denied the request, and that denial was reviewed and affirmed by the

[2]The Bank states that the appraised value of the land was not the determinative factor in rejecting the Gayles' application to restructure the loan. Moreover, according to the Bank, the appraisal submitted to the Credit Review Committee demonstrated that the loan was fully secured because the value of the land was greater than the Gayles' indebtedness.

Credit Review Committee. Because we are unable to point to any inequitable conduct on the part of the Bank, we affirm the district court's grant of summary judgment in favor of the Bank.[3]

IV

For the foregoing reasons, the judgment of the district court is

A F F I R M E D.

[3]In their reply brief, the Gayles contend that they were denied due process because the Bank did not allow them adequate time to secure an independent appraisal. As we have discussed above, we do not find this argument persuasive. To the extent that this argument raises the new issue, we decline to consider it. An issue raised for first time in a reply brief is not "raised on appeal" and is waived. United States v. Miller, 952 F.2d 866, 874 (5th Cir. 1992).