

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 1, 2026

Lyle W. Cayce
Clerk

No. 25-10694
Summary Calendar

BASIL BROWN,
individually and as personal representative of his deceased wife,
YVONNE BROWN,

Plaintiff—Appellant,

versus

GATEWAY MORTGAGE GROUP, L.L.C.;
MICHAEL J. SCHROEDER,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CV-2826

Before SMITH, SOUTHWICK, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Basil and Yvonne Brown¹ filed a *pro se* civil action challenging various aspects of a foreclosure. Gateway Mortgage Group, L.L.C. (Gateway), filed

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

¹ Yvonne Brown died during this appeal, and Basil Brown was allowed to substitute as her personal representative.

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a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim, which was granted. The Browns appeal the dismissal. They also have moved to order the district clerk to enter a default against Michael Schroeder, which motion we liberally construe as a petition for writ of mandamus. We grant the Browns' motion for leave to file a reply brief out-of-time.

As an initial matter, we agree with the district clerk that Schroeder was never properly served and, thus, he was not in default. Per Federal Rule of Civil Procedure 15, the Browns needed the consent of Gateway or leave of court, which they did not have at the time, to file their first amended complaint. Because that amended complaint was unauthorized, it was of no legal effect and could not have been validly served on Schroeder. *See United States ex rel. Matthews v. HealthSouth Corp.* 332 F.3d 293, 296 (5th Cir. 2003). For the same reasons, we deny the Browns' motion to order the district court clerk to enter a default against Schroeder. *See In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987).

The Browns also challenge the district court's decision to vacate the clerk's entry of default against Gateway. We agree with the district court that, because Gateway appeared and filed an opposition to the Browns' motion for a temporary restraining order, it did not fail to "otherwise defend" against their action. *See* FED. R. CIV. P. 55(a). Thus, Gateway was not in default, and the district court did not abuse its discretion by vacating the entry of default. *See Lacy v. Sitel Corp.*, 227 F.3d 290, 292 (5th Cir. 2000).

Next, the Browns posit that the district court erred by dismissing their complaint because the defendants committed appraisal fraud and because the Browns had a right to a COVID forbearance. We agree with the district court that the Browns failed to meet the heightened pleading requirements

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for a claim of fraud. *See* FED. R. CIV. P. 9(b). We also concur with the district court that the relevant COVID moratorium period did not apply to the Browns because it had long since expired. *See* 15 U.S.C. § 9056(c)(2). Thus, the district court did not err by dismissing the complaint for failure to state a claim. *See Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008).

For the first time in their reply brief, the Browns contend that Gateway also breached the terms of their construction contract. We decline to consider that argument. *See Benefit Recovery, Inc. v. Donelon*, 521 F.3d 326, 329 (5th Cir. 2008).

Finally, the Browns claim that the district court erred by dismissing their complaint with prejudice. We agree with the district court that the Browns have pleaded their best case and further leave to amend would be futile. *See Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998).

AFFIRMED.