

STATEMENT OF THE ISSUE

Whether genuine issues of material fact exist which preclude granting summary judgment, and whether Farm Credit Services was entitled to summary judgment as a matter of law.

Statement of Factual Issues

1. Did the trial court err in granting summary judgment where genuine issues of material facts exist for the jury to decide on breach of contract and breach of the implied covenant of good faith, and where FCS is not entitled to summary judgment as a matter of law?
2. After making specific findings that "Farm Credit acted unreasonably toward the Dougans," did the trial court err in deciding the jury issue of whether the conduct of FCS breached the contract or breached the implied covenant of good faith and fair dealing?
3. Viewed in the light most favorable to the Dougans, do the affidavits, responses to request for admissions, answers to interrogatories, deposition testimony, and pleadings show that genuine jury issues of material fact exist which precluded the trial court from granting summary judgment?
4. Did FCS as the moving party meet its burden of proof, and establish that there are no genuine issues of material fact for the jury to decide, and that FCS is entitled to summary judgment as a matter of law?
5. Where serious drought caused a reduction in crop production and prices of grain and livestock, and FCS had over \$1,500,000 equity in Dougans' assets, did FCS breach the contract and implied covenant of good faith by refusing to extend the payment date from May 1 to October 1?
6. Where it would cost FCS nothing to restructure by moving the payment to October 1, and FCS had no risk of losing its equity by moving the payment date, and FCS did not comply with the FCS policy on restructure versus foreclosure, did FCS' decision not to move the payment date and to foreclose breach the contract and the implied covenant of good faith?

7. Where FCS refused to extend the May 1 payment date to allow wheat to be harvested and livestock to be sold, and declared a default, and thereafter Dougans paid FCS \$54,000 in September from the wheat crop and FCS accepted such payments, but FCS refused to release any money to allow Dougans to plant the fall wheat crop or hold the fall horse sale and FCS continued to foreclose, did FCS breach the contract and the implied covenant of good faith and fair dealing?
8. Where Dougans paid FCS \$66,000 in 2002, and FCS applied \$45,000 to the revolving credit note when no payment was necessary, but FCS applied no payment to the real estate note so that it could foreclose on Dougans' real estate, did FCS breach the contract and implied covenant of good faith and fair dealing?